

**BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-  
WASHINGTON REGIONAL DISTRICT IN  
MONTGOMERY COUNTY, MARYLAND  
Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 200  
Rockville, Maryland 20850  
(240) 777-6660**

**IN THE MATTER OF:  
BOWIE MILL ROAD, LLC**

Applicant

Robert Goldman, President/CEO  
Montgomery Housing Partnership  
John M. Clarke, Vice President, Elm Street Dev.  
Edward Papazian  
Edward Wallington  
Trini Rodriguez  
For the Application

Jody S. Kline, Esquire  
Attorney for the Applicant

\*\*\*\*\*

Joseph Giloley, Chief  
Division of Housing Code Enforcement  
Department of Housing and Community Affairs  
Montgomery County Government  
In Support of the Application

\*\*\*\*\*

Martin Klauber, Esquire  
People's Counsel

Conditionally in Support of the Application<sup>1</sup>

\*\*\*\*\*

Barbara Falcigno, President, Olney Coalition  
Roger Seganish, President  
Briars Acres Community Association  
Robin Shea, President, Oatland Farm HOA  
Matt Zaborsky, President  
Greater Olney Civic Association  
Howard Greif, resident of Norbeck Grove

In Opposition to the Application

\*\*\*\*\*

Before: Martin L. Grossman, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION**

<sup>1</sup> Mr. Klauber's support of the application was conditioned upon elimination of the "2 over 2" units from the plan. Tr. 334-335.

Zoning Application No. G-885

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## I. EXECUTIVE SUMMARY

Applicant:	Bowie Mill Road, LLC (Site is owned by Montgomery County, which supports the development as a vehicle to provide affordable housing, consistent with the Master Plan).
LMA No. & Date of Filing:	G-885, filed August 11, 2009
Zoning and Use Sought:	Zone: PD-3    Use: A maximum of 114 residential units, at least 50% of which will be affordable as either MPDUs or Work Force Housing (WFH). <sup>2</sup> No commercial uses are proposed.
Current Zone and Use:	Zone: R-200    Current Use: Undeveloped.
Location:	At 18241 Bowie Mill Road, Olney, Maryland.
Acreage to be Rezoned:	Approximately 32.74 acres
Base Density Permitted in Zone:	3 Dwelling Units per acre x 32.74 acres = 98.22 Dwelling Units
Bonus Density for MPDUs:	Additional Density Permitted with over 15% MPDUs = 22% 98 DU + 22% = 119 DU Permitted (98 + 21 = 119)
Density Proposed by Applicant :	Up to 114 Dwelling Units, with 30% MPDUs ( <i>i.e.</i> , 34 MPDUs)
Green Space Required/Planned:	30% required / 45% planned
Parking Required/Planned:	228 spaces required for 114 dwelling units / 243 are planned.
Environmental Issues:	The site is not in a Special Protection Area or Primary Management Area. However, the property contains 6.7 acres of wooded area, stream and wetland of which most will be retained as part of the Forest Conservation requirements.
Consistency with Master Plan:	Project is consistent with the 2005 Olney Master Plan.
Neighborhood Response:	There is significant community opposition to this project, which centers around compatibility and traffic concerns; however, one of the chief concerns had been about “2 over 2” units that had been proposed. Applicant ultimately agreed to a binding element precluding 2 over 2 units on the site, but opposition continues.
Planning Board Recommends:	Approval
Technical Staff Recommends:	Approval
Hearing Examiner Recommends:	Approval

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<sup>2</sup> The 50% affordable housing requirement is a binding element on the second page of the Land Use Plan (Exhibit 132(b)), as will be discussed later in this report. Applicant’s development agreement with the County (Exhibit 84, p.

## II. STATEMENT OF THE CASE

Application No. G-885, filed on August 11, 2009, by Applicant Bowie Mill Road, LLC, requests reclassification of a 32.74 -acre parcel of unimproved land from the R-200 Zone to the PD-3 Zone. The Property is owned by the Montgomery County Government and is known as Parcel P850. It is located at 18241 Bowie Mill Road, about half a mile west of Laytonsville Road, in Olney, Maryland. The Applicant and the County have entered into a “Development Agreement and Agreement of Sale and Purchase,” which is in the record as Exhibit 84.

The Applicant proposes to develop the property with 114 residential units, at least 40% market-rate units, 30% Moderately Priced Dwelling Units (MPDUs), and 30% Workforce Housing (WFH) units.<sup>3</sup> This plan will result in 46 market rate units, 34 MPDUs and 34 WFH units. No commercial uses are proposed.

The application for rezoning was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), who in a report dated April 9, 2010, recommended approval (Exhibit 65).<sup>4</sup> The Montgomery County Planning Board (“Planning Board”) considered the application on April 22, 2010 and, by a vote of 5 to 0, also recommended approval, as stated in a memorandum dated April 23, 2010 (Exhibit 71).<sup>5</sup>

Over eighty opposition letters were received from the neighboring community. The opposition centers around compatibility and traffic concerns; however, much of the compatibility

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3) and the “informational” development standards on its Land Use Plan (Exhibit 132(a)) call for 60% of the units to be affordable. Thus, 50% is the minimum without a development plan amendment, but 60% is the agreed-upon plan.

<sup>3</sup> There is a binding element on the second page of the Land Use Plan (Exhibit 132(b)), which provides for a minimum of 50% affordable housing requirement; however, Applicant’s development agreement with the County (Exhibit 84, p. 3) and the “informational” development standards on the first page of its Land Use Plan (Exhibit 132(a)) call for 30% of the units to be MPDUs and 30% to be WFH.

<sup>4</sup> The Technical Staff Report is quoted and paraphrased frequently herein.

<sup>5</sup> In that same memorandum, the Planning Board noted that “serious consideration should be given for alternative detached housing types to that of the 2 over 2s while maintaining the proposed unit numbers to a maximum of 117.” This goal was accomplished by Applicant agreeing, after the hearing, to a binding element precluding “2 over 2” units.

concern involved Applicant's plan to develop 24 "2 over 2" townhouse units on the site, a plan which was later changed.

A public hearing was originally noticed for January 22, 2010 (Exhibit 21), but it was postponed so that the Applicant could amend its application to resolve some concerns raised by Technical Staff. Exhibit 48. Following these revisions, a new notice of a hearing date was issued on February 17, 2010 (Exhibit 60), and the hearing proceeded as scheduled on May 3, 2010. Applicant called five witnesses, and Joseph Giloley of the County's Department of Housing and Community Affairs also testified in support of the application. Five opposition witnesses testified, including four from local civic and homeowners associations. In addition, a petition was filed by 21 adjacent and confronting property owners, stating their opposition to the rezoning because they "feel the density of the current plan is not compatible with the adjacent communities." Exhibit 75. The People's Counsel participated in the proceedings and supported the application, on condition that the "2 over 2" units be eliminated. Tr. 334-335.

The record was held open until May 19, 2010, for additional submissions by Applicant and comments thereon by Technical Staff and interested parties. Comments were received from both sides, and the record closed on May 19. On May 21, 2010, after an exchange of correspondence with the Hearing Examiner, Applicant submitted a revised development plan (Exhibits 132(a) and (b)), which added a new binding element prohibiting "two-over-two" dwelling units; modified the first binding element by reducing the total number of units planned for the site to 114; added a binding element requiring single-family, detached dwelling units on lots of a compatible size along Darnell Drive and Daly Manor Place; made corresponding changes on the site layout, in the General Notes and in the Development Standards; and corrected minor typographical errors in the Plan. The record was therefore reopened on May 24, 2010, to receive the revised development plan and commentary by Technical Staff and interested parties. Exhibit 134.

On June 1, 2010, Technical Staff indicated that it had no objection to Applicant's revised plans and binding elements. Exhibit 136. The record closed again on June 4, 2010.

On June 23, 2010, Applicant filed a letter (dated June 21, 2010) requesting that an additional disclosure statement regarding contributions to Council candidates be made a part of the record. Exhibits 139 and 139(a). Therefore, on June 28, 2010, the record was reopened to receive Applicant's letter and the additional disclosure statement. Exhibit 140. Interested parties were given until July 8, 2010 to comment thereon, on which date the record closed again.

After carefully reviewing the entire record, the Hearing Examiner finds himself in agreement with the recommendations of Technical Staff and the Planning Board. The neighbors have understandable concerns about plans for a large development in their community, but the development plan is consistent with what is called for in the 2005 Olney Master Plan. The Applicant has been flexible in making changes to alleviate one of the main worries expressed by the neighbors (the issue of two-over-two units), and has agreed to add an additional binding element requiring single-family, detached dwelling units on lots of a compatible size along Darnell Drive and Daly Manor Place, in order to protect compatibility with the abutting neighbors. Although the Hearing Examiner is concerned about the amount of new traffic that will be generated on Bowie Mill Road, all of the expert evidence is to the effect that transportation facilities will be adequate. For all the reasons discussed below in this report, the Hearing Examiner recommends that the Council approve this rezoning application and development plan.

### **III. FACTUAL BACKGROUND**

#### **A. Subject Property**

The 32.74-acre subject property is located on the south side of Bowie Mill Road and has approximately 950 feet of frontage along that street. The lot is shaped like a rectangle with a notch missing from its northeast corner. As stated by Technical Staff, the property is currently

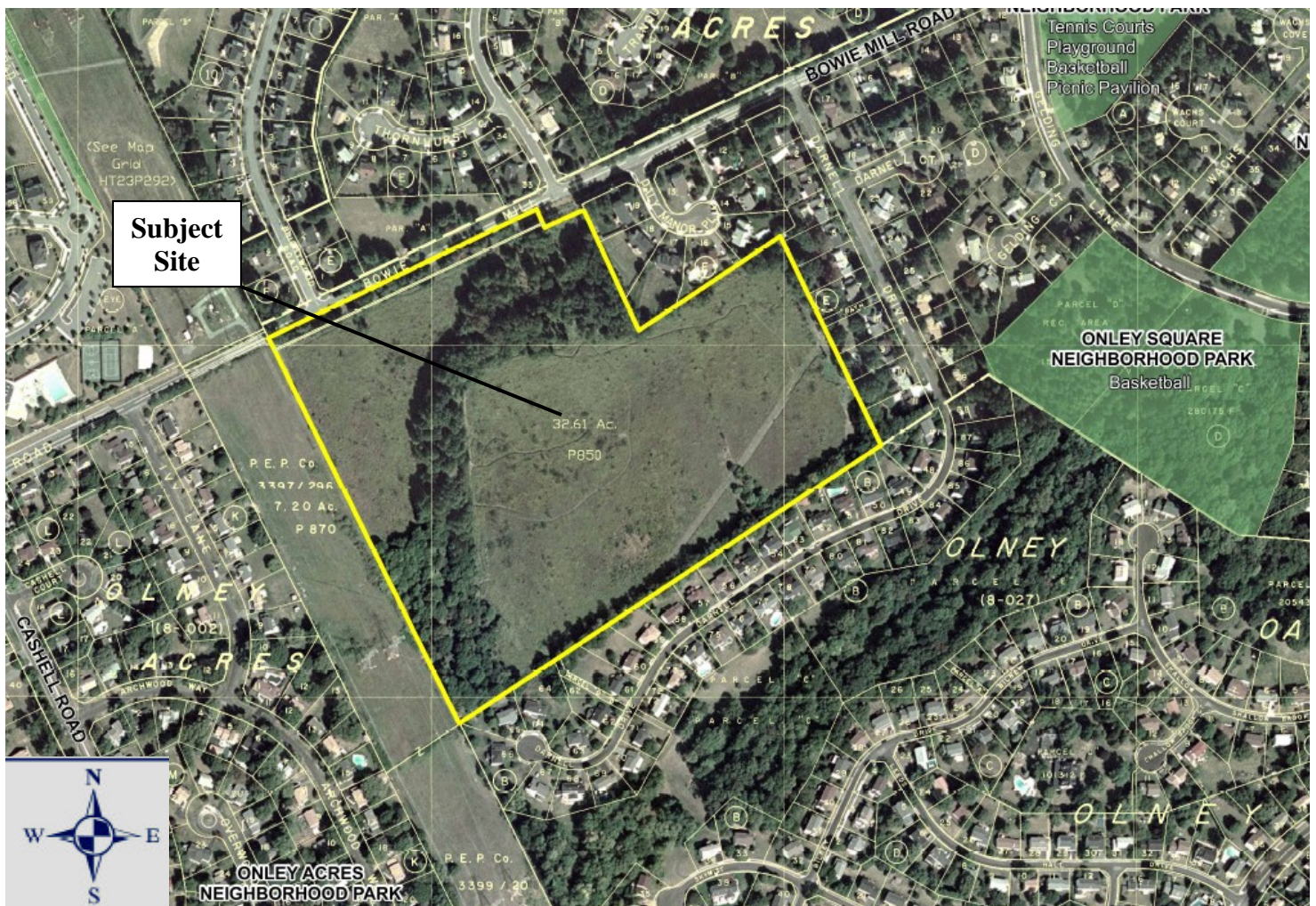


undeveloped and contains streams, 1.2 acres of wetland and 6.7 acres of wooded area (including 41 specimen trees), some of which will be retained as part of the Forest Conservation requirements.

Exhibit 65, p. 5. The Applicant's Pre-Hearing Statement (Exhibit 61(a), p. 2) describes the property's topography as follows:

The topography of the property is reasonably level but drops downward from the grade of Bowie Mill Road that abuts the northern side of the parcel of land. The center of the site is the location with the least variation in topography from which the land slopes towards an intermittent watercourse that traverses diagonally across the western half of the property.

The wetlands are located in the western half of the site, and they are outside of the area of disturbance for the new development. The property's location and its features can be seen on the following aerial photo (Exhibit 16):



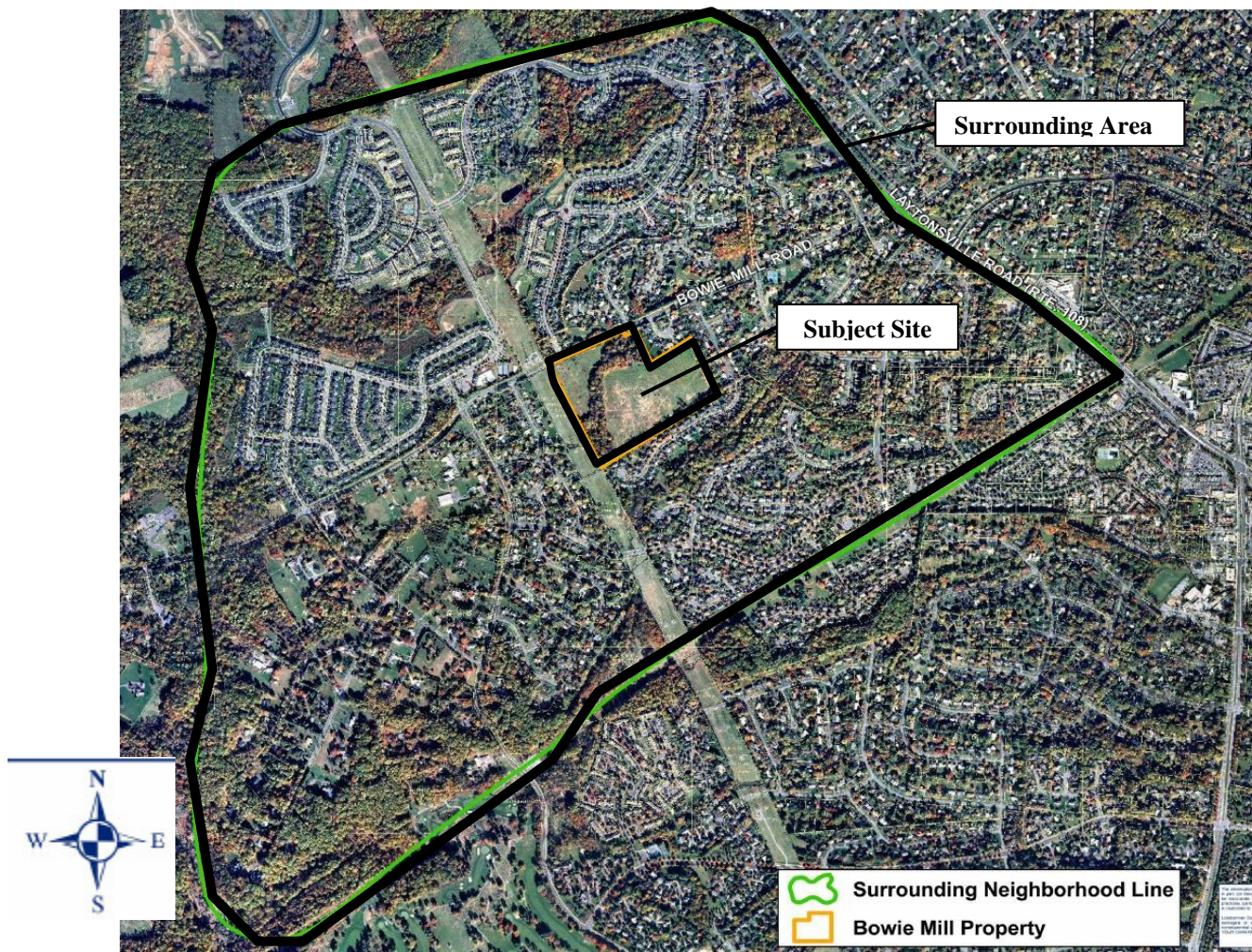


## B. Surrounding Area and Adjacent Development

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, Technical Staff proposed to define the surrounding area boundaries as follows (Exhibit 65, p. 5):

North	North Branch Stream Valley Park/Laytonsville Road (MD 108)
East	Laytonsville Road/Georgia Avenue (MD-97)
South	Morningwood Drive /Headwaters Drive
West	North Branch Stream Valley Park

This surrounding area is generally coextensive with the neighborhood suggested by Applicant in its Surrounding Neighborhood Exhibit 120(a), which is reproduced below:





The Hearing Examiner accepts this definition of the surrounding area. While it is rather large and extends beyond the potential visible impact of the proposed development, the traffic impacts of this new community will be felt for some distance along the single street to which it has direct access, Bowie Mill Road.

As described by Technical Staff, the land use within the surrounding area is predominantly single-family detached residences in the R-200, RE-1 and RE-1/TDR zones. The Applicant's Pre-hearing Statement (Exhibit 61(a), p. 3) describes the uses within the immediate vicinity of the site:

Adjoining the property along its northern boundary is Bowie Mill Road which extends from Muncaster Mill Road to Laytonsville Road (Route 108). To the north of Bowie Mill Road are the single family residential communities of "Briars Acres" and "Oatland Farm".

To the west of the subject property is a PEPCO transmission line that is approximately 250 feet wide. Further to the west are the residences of the "Olney Acres" subdivision.

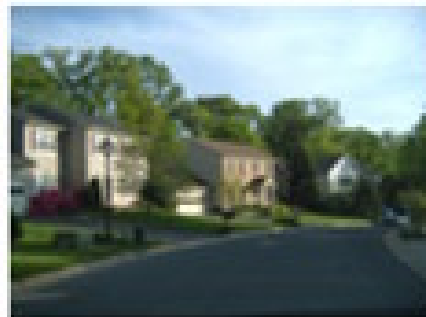
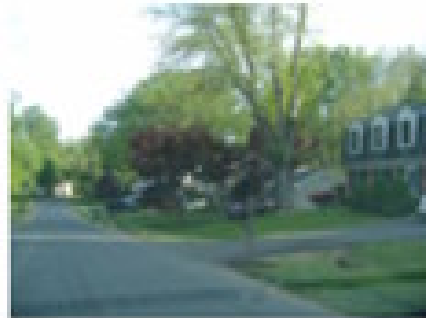
Abutting the property along the south is the "Olney Oaks" neighborhood, including a green belt south of Darnell Drive that divides the community.

To the east of the subject property, extending to Route 108, is the "Olney Square" neighborhood, including both active and passive recreation elements found in the components of the "Olney Square Neighborhood Park."

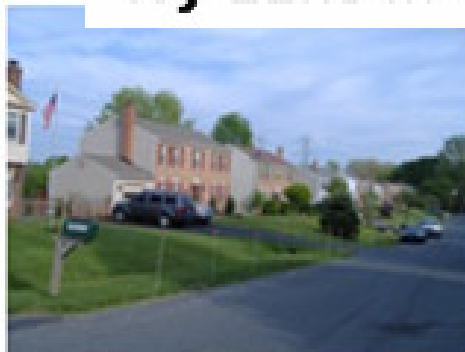
Thus, the subject property adjoins residential properties to the south and east. Confronting the subject property across Bowie Mill Road to the north are single-family residences in the R-200 zone. The area also includes local recreational facilities and neighborhood parks. Some retail and light commercial uses are located at the eastern end of the neighborhood along MD 108, but the character of the neighborhood is almost exclusively residential.

Photographs of some residential properties in some surrounding area developments were provided by the opposition in a power-point presentation. They give a sense of the neighboring residential community. The images on the next page are from the Olney Coalition's Exhibit 96:

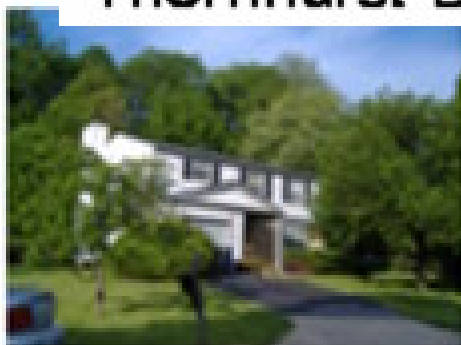
## **Darnell Drive in Olney Oaks and Olney Square**



## **Ivy Lane in Olney Acres**



## **Thornhurst Dr in Briars Acres**



### **C. Zoning History**

According to Technical Staff (Exhibit 65, p. 6), the site was placed in the R-R Zone when that zone was created and mapped in the 1954 Regional District Zoning. The 1958 County–Wide Comprehensive Zoning confirmed the R-R zoning of the site. The R-R Zone was renamed R-200 in 1973. The 1980 Master Plan for Olney recommended the site for a High School. The 2005 Olney Master Plan recommended a base zone of R-200, with development under the PD-3 Zone by Local Map Amendment. The 2005 Olney Sectional Map Amendment (G-838) implemented the Master Plan’s recommendations.

### **D. Proposed Development**

#### **1. Development Concept**

Applicant is proposing a 114-unit residential development separated into two parts by the stream valley and forest that divides the western portion of the property. Development of the site is under a negotiated agreement with the County government, which commits the Applicant to providing at least 40% market-rate units, 30% MPDUs, and 30% Workforce Housing (WFH) units. Exhibit 84, p. 3. To effectuate this agreement, the site would be constructed with 46 market rate units, 34 MPDUs and 34 WFH units. No commercial use is proposed.

Applicant’s vision for the development is stated in its Pre-hearing Statement (Exhibit 61(a), pp. 1-2),

Zoning Application No. G-885 is a proposal to use a publicly owned vacant parcel of land containing 32.74 acres of land to produce a residential community with a wide mix of dwelling unit types containing both market priced residences but with a strong emphasis on affordable housing.

Taking advantage of the unique features of the subject property, the Applicant has organized and oriented the proposed dwelling units to create a cohesive community that is compatible with surrounding development notwithstanding the increased density permitted by the requested PD-3 zoning.

The community is accessed by two streets connecting to Bowie Mill Road. The larger section of the community is organized around an entrance roadway, almost a boulevard, which loops through the southern portion of the site to provide a simple but effective circulation system for both vehicle and pedestrian traffic.

The smaller section of the community located in the northwest corner of the site, has been designed to take advantage of the easy accessibility to a large greenway running from Bowie Mill Road and exiting in the southwest corner of the property.

Residence types proposed for the community are quite varied. They include single family detached residences and attached homes with variety in each unit type due to market and/or affordable housing considerations.<sup>6</sup>

An overview of the proposed development reflecting this vision is contained in Applicant's proposed illustrative plan (Exhibit 108), a portion of which is reproduced below:



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<sup>6</sup> This variety is illustrated in Applicant's "Unit Mix" plan, Exhibit 88.



## 2. Development Plan & Binding Elements

Pursuant to Code § 59-D-1.11, development under the PD-3 Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD-3 Zone. Under Code §59-D-1.3, this development plan must contain several elements:

- (a) A natural resources inventory;
- (b) A surrounding area map, showing the relationship to the site and use of the adjacent land;
- (c) A land use plan showing site access; locations and uses of all buildings and structures; a preliminary classification of dwelling units; locations of parking areas, including number of parking spaces; location of land to be dedicated to public use; location of land intended for common or quasi-public use but not intended to be in public ownership; and a preliminary forest conservation plan;
- (d) A development program stating the sequence of proposed development;
- (e) The relationship, if any, to the County's capital improvements program;
- (f)&(g) . . . [Inapplicable to the PD-3 Zone];
- (h) The density category applied for, as required in subsection 59-C-7.14(a), and where commercial facilities are included (which is not the case here), an economic analysis supporting their inclusion; and
- (i) . . . [Inapplicable to this case since the site is not within a special protection area].

The Development Plan in this case fulfills these requirements. The Development Plan and the Land Use Plan that constitutes one of its primary parts are binding on the Applicant except where particular elements are identified as illustrative or conceptual. Illustrative and conceptual elements may be changed during site plan review by the Planning Board, but the binding elements (*i.e.*, those that the District Council will consider in evaluating compatibility and compliance with the zone) cannot be changed without a separate application to the District Council for a development plan amendment.

The final Land Use Plan for the present zoning application is contained in Exhibits 132(a) and (b). Although land use plans are technically only a part of the overall development plan, they are usually referred to as the "development plan," and may be so referenced in this report. It contains a site layout, a listing of all the binding and non-binding elements and other notations.

The proposed Development Plan is divided into two pages. Page 1 (Exhibit 132(a)) contains an illustrative site layout, a development standards table, a recreational amenities table and general notes and site data. Page 2 (Exhibit 132(b)) contains an expanded illustrative site layout and a listing of the binding elements agreed to by the Applicant. The Development Plan is reproduced below:



## \*DEVELOPMENT STANDARDS

BOWIE MILL 06-23-2008		REQUIRED ALLOWED	Unit A	Unit B	Unit C	Unit D	Unit E	Unit F	Unit G	Unit H	Total Development
		Zoning Ordinance Development standards	Detached Market 1	Detached Market 2	Detached Workforce 1	Attached Workforce 1.1	Attached Workforce 2	Attached Workforce 2.1	Attached Workforce 3	Attached MPDU	
1	Gross Tract Area	N/A									32.77 Ac.
2	Zone PD-3										
3	Maximum Number of Dwelling units Proposed	114	37	9	11	0	5	7	11	34	114
4	Bedroom Classifications	Non Req.	3-4	3-4	3-4		3-4	3-4	3	3	
5	MPDU and Bonus Calculation										
	a. Base Density	98									
	b. Bonus Units Allowed	21									
	c. Total Residential Units Allowed	115									
	d. Total Residential Units Proposed	114									114
	e. MPDUs Required	18									18
	f. MPDUs Proposed	34								34	34
7	Minimum Green Area	30%									44.9% Proposed
8	Minimum Lot Size	None Req.	5000 SF	3500 SF	3500 SF		1100 SF	1100 SF	1100 SF	1100 SF	
9	Minimum Setbacks										
	a. From project boundary	None Req.	30'	NA	NA		20'	NA	10'	NA	
	b. From Bowie Mill R/W	None Req.	NA	NA	NA		20'	NA	NA	NA	
			15'	15' (adjacent to R.O.W.) 10' (adjacent to private street or open space)	15' (adjacent to R.O.W.) 10' (adjacent to private street or open space)		10'	10'	10'	10'	
	c. Primary Front	None Req.					0'	0'	0'	0'	
	d. Side	None Req.	4'	3'	3'		0'	0'	0'	0'	
	e. Rear	None Req.	30' (adjacent to property boundary)	5'	5'		15'	15'	15'	15'	
10	Minimum Separation Between Attached Building Sticks	None Req.	N/A	N/A	N/A		10'	10'	10'	10'	
11	Maximum Height	None Req.	Height equal to setback from boundary								
12	Parking Requirement	228 spaces (2 per unit)	74	18	22		10	14	22	68	228
	a. On Lot Parking Provided		74	18	22		10	14			138
	b. Private Street Parking						2		25	78	105
	c. Total Parking		74	20	20		12	14	25	78	243

\* For informational purposes only. Final Development Standards  
to be determined at time of preliminary plan and site plan review.

## \*\* BOWIE MILL PROPERTY

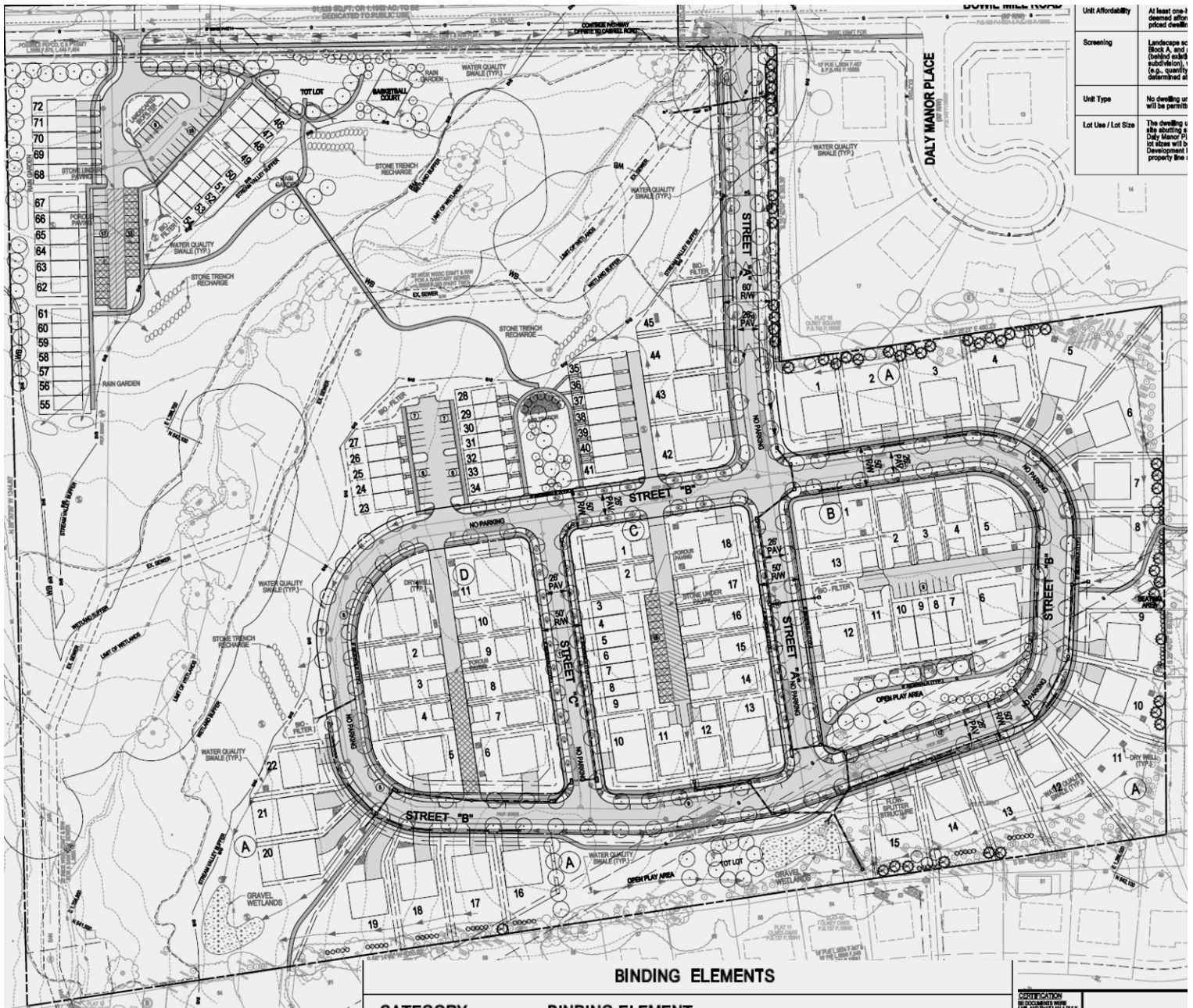
## RECREATIONAL AMENITY REQUIREMENTS

Recreational Demand	D1	D2	D3	D4	D5
Tots	Children	Teens	Adults	Seniors	
Single Family III	14 x 0.57 =	19 x 0.57 =	23 x 0.57 =	127 x 0.57 =	13 x 0.57 =
57 d.u. / 100 = 0.57	7.98	10.83	13.11	72.39	7.41
Townhouse	17 x 0.57 =	22 x 0.57 =	18 x 0.57 =	129 x 0.57 =	7 x 0.57 =
57 d.u. / 100 = 0.36	9.69	12.54	10.26	73.53	3.99
<b>Total Demand</b>	<b>17.67</b>	<b>23.37</b>	<b>23.37</b>	<b>145.92</b>	<b>11.4</b>
<b>Less 10% Allowed Variance</b>	<b>15.90</b>	<b>21.03</b>	<b>21.03</b>	<b>131.33</b>	<b>10.26</b>
Recreational Amenities Provided (Supply)					
Pedestrian System	0.10 x 16.74 =	0.20 x 22.11 =	0.20 x 22.47 =	0.45 x 147.15 =	0.45 x 13.77 =
	1.77	4.67	4.67	65.66	5.13
Natural Path	0.05 x 16.74 =	0.10 x 22.11 =	0.15 x 22.47 =	0.15 x 147.15 =	0.15 x 13.77 =
	0.88	2.34	3.51	21.89	1.71
Natural Area	0* 16.74 =	0.05* 22.11 =	0.10* 22.47 =	0.10* 147.15 =	0.05* 13.77 =
	0	1.17	2.34	14.59	0.57
Tot Lot - 1 ea.	9 x 1 =	2 x 1 =	0 x 1 =	4 x 1 =	1 x 1 =
(1,000 s.f. min.)	9	2	0	4	1
Play Lot - 1 ea.	0 x 1 =	9 x 1 =	3 x 1 =	4 x 1 =	1 x 1 =
(1,500 s.f. min.)	0	9	3	4	1
Open Play Area II - 1 ea.	3 x 1 =	4 x 1 =	4 x 1 =	10 x 1 =	1 x 1 =
(5,000 s.f. min.)	3	4	4	10	1
Picnic/Seating - 2	1 x 2 =	1 x 2 =	1.5 x 2 =	5 x 2 =	2 x 2 =
	2	2	3	10	4
<b>Total On-Site Supply Provided</b>	<b>16.65</b>	<b>25.18</b>	<b>20.52</b>	<b>130.14</b>	<b>14.41</b>
<b>Offsite Amenities at Olney Square Neighborhood Park - 35% credit</b>					
<b>(Park located approx. 1/2 mile from the site)</b>					
Multi-Age Playground - 2	9* 2* 35% =	11* 2* 35% =	3* 2* 35% =	7* 2* 35% =	1* 2* 35% =
	6.3	7.7	2.1	4.9	0.7
Picnic/Seating	1* 35% =	1* 35% =	1.5* 35% =	5* 35% =	2* 35% =
	0.35	0.35	0.525	1.75	0.7
Tennis Court - 2	0* 35% =	1.5* 2* 35% =	10.5* 2* 35% =	24* 2* 35% =	1* 2* 35% =
	0	1.05	7.35	16.8	0.7
Basketball - 2	3* 2* 35% =	10* 2* 35% =	15* 2* 35% =	10* 2* 35% =	2.5* 2* 35% =
	2.1	7	10.5	7	1.75
Natural Area	0* 16.74* 35% =	0.05* 22.11* 35% =	0.10* 22.47* 35% =	0.10* 147.15* 35% =	0.05* 13.77* 35% =
	0	0.41	0.82	5.11	0.20
Total Off-Site Amenities	8.75	16.51	21.29	35.56	4.05
<b>35% of Off-Site Amenities</b>	<b>3.06</b>	<b>5.78</b>	<b>7.45</b>	<b>12.45</b>	<b>1.42</b>
<b>Total Amenities (On-Site and Off-Site)</b>	<b>19.71</b>	<b>30.96</b>	<b>27.97</b>	<b>142.59</b>	<b>15.83</b>

## GENERAL NOTES and SITE DATA

- Existing 2' contour interval topography provided by Air Surveys - April, 2009.
- Boundary information by Loiederman Soltész Associates, Inc. - May, 2009.
- The subject property is located within WSSC grid 225NW4.
- Soils information from Map 14 of the Montgomery County Soil Survey conducted by the USDA Soil Conservation.
- There are no designated historic sites associated with this property.
- There exists a NRI/FSD dated 11/17/09 prepared by Loiederman Soltész Associates, Inc.
- This property lies within the Olney Area Master Plan.
- Existing Water and Sewer Categories: W3/S3.
- Grid coordinates are per Maryland State Plane Datum (NAD 83/91).
- The property is located within the Upper Rock Creek Watershed.
- No floodplain exists on the site.
- Existing Zoning: R-200.
- Proposed Zoning: PD-3.
- Number of MPDUs required:
  - 32.74 acres x 3 = 98 (base density)
  - Maximum density allowed (using 22% bonus) = 98 x 22% = 21. 98 + 21 = 119 dwelling units.
  - Total number of dwelling units proposed: 114
  - Bonus units (114 - 98) = 16
  - MPDUs required: (15% of 114) = 18
  - MPDUs proposed: 34
- Minimum building setbacks: As established by Site Plan approval.
- Minimum Green space required: 30%  
Green space proposed: 44.9%
- Parking requirements: See table illustrating the preliminary development standards.
- The Development Plan depicts the overall concept for the orderly development of the subject property as it is presently envisioned. Specific lot configurations, building locations, parking locations, community features and other design details will be refined and finalized during subsequent subdivision and site plan review proceedings.
- The Development Plan reflects the approved stormwater management concept. Details of the stormwater management features may be changed at the time of subdivision and site plan review and/or at the time of final engineering.





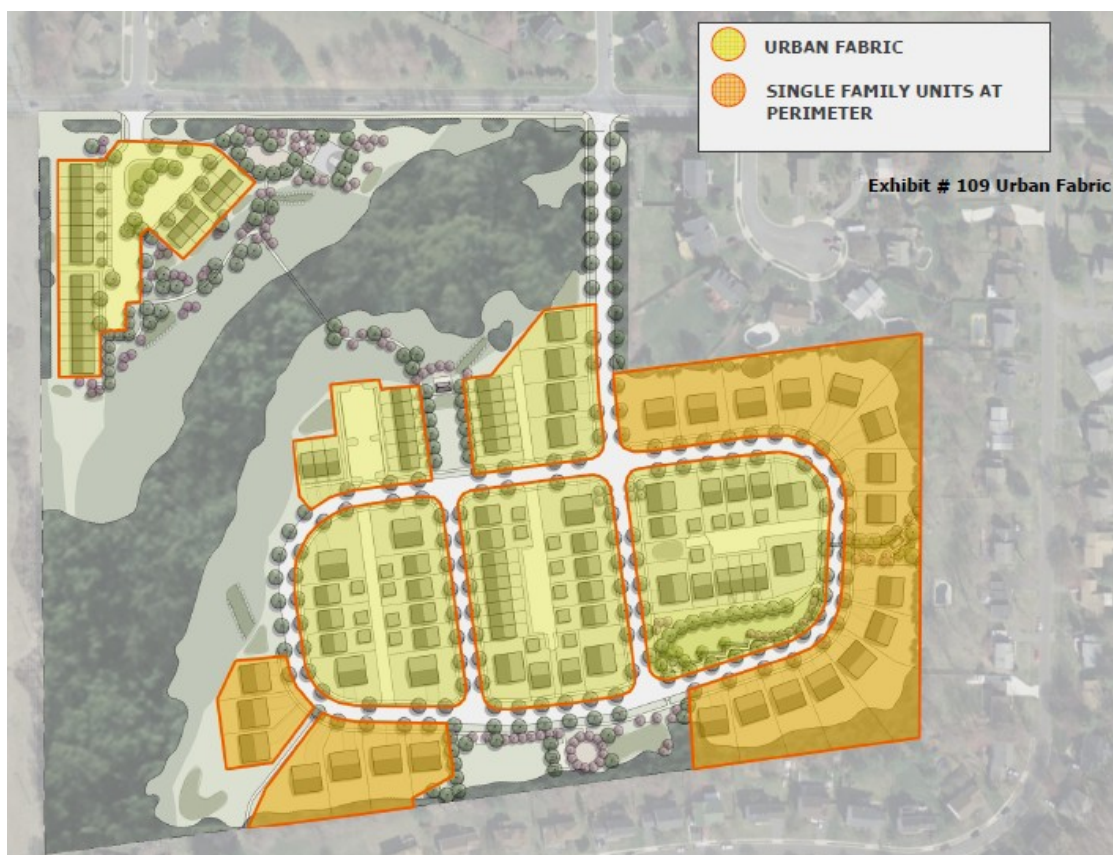
Unit Affordability	At least one-half of the units to be constructed will be deemed affordable under the County's moderate priced dwelling unit and/or work force housing programs.
Screening	Landscape screening at the rear of proposed Lots 1 through 4, Block A, and along the east side of proposed Street A (behind existing Lots 16-19, Block E, OLNEY SQUARE subdivision), will be provided. Details of such plantings (e.g., quantity, species, callper, and spacing) shall be determined at the time of site plan review.
Unit Type	No dwelling units commonly known as "two over twos" will be permitted.
Lot Use / Lot Size	The dwelling units to be located on the perimeter of the subject site abutting single family detached homes on Darnell Drive and Daly Manor Place will all be single family detached units and the lot sizes will be approximately the same size as shown on the Development Plan. There may be open play area on the southern property line abutting existing Darnell Drive homes.

NOTIFICATION  
PROPOSED DEVELOPMENT  
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The above diagrams and text show the proposed locations of all structures, roadways, open spaces and dedicated areas, as well as additional information regarding the planned development. However, as noted on the Development Plan, the specific lot configurations, building locations, parking locations, community features and other design details will be refined and finalized during subsequent subdivision and Site Plan review proceedings. The binding elements cannot be changed without Council approval.

The final two binding elements were agreed to by Applicant after the hearing, and approved by Technical Staff. Exhibit 136. Applicant's agreement to foreclose the use of "two over two" dwelling units eliminated one of the chief concerns of the Planning Board and the neighbors. The binding element specifying the use of single-family detached homes on the perimeter, adjacent to existing single-family homes, was added at the request of the Hearing Examiner to ensure compatibility with the abutting neighbors. This addition was consistent with Applicant's plans, as reflected in its "Urban Fabric" plan (Exhibit 109), but had not been previously specified as a binding element. Exhibit 109 is reproduced below:



The base density allowed for a site of this size in the PD-3 Zone is three Dwelling Units per acre. Multiplying that by 32.74 acres yields a maximum base density of 98.22 Dwelling Units. However, the Applicant is entitled to a Bonus Density of 22% because it will provide more than 15% MPDUs. Montgomery County Code §25A-5(c). Multiplying 98 dwelling units by 22% yields a bonus density of 21 dwelling units. Adding that density to the base density of 98 results in a permissible maximum density of 119 dwelling units. As noted, Applicant proposed 114 dwelling units (*i.e.*, well under the maximum density permitted).

According to Technical Staff, the development data provided by Applicant will meet the development standards for the PD-3 Zone, including the minimum of 30% green area required by the Zone (§59-C-7.16). Exhibit 65, pp. 14-19. Applicant has depicted approximately 44.9% green area. The project also projects providing 243 parking spaces, more than the 228 spaces required for 114 dwelling units.

### **3. Conformance with the Master Plan**

The subject property is located in the area analyzed in the 2005 Olney Master Plan. The Master Plan directly addresses the subject site as Item #15, on pp. 37-38. The text is quoted in full:

This approximately 32-acre property on the south side of Bowie Mill Road was recommended for a high school site in the 1980 Master Plan. The Montgomery County Public Schools (MCPS) later determined that it was not needed for school purposes, surplussed it, and transferred it to the County. It is zoned R-200 and contains a stream but no significant forest.

The public ownership, its location on a major road, and the size of the property make it suitable for a housing development including affordable housing. To maximize the potential for affordable housing, the site is appropriate for R-200/PD-3 zoning but the actual yield may be limited due to compatibility and environmental constraints on the site. The full yield allowed by the PD-3 Zone is only appropriate if the following objectives can be met:

1. At least half of the units are affordable (Moderately Priced Dwelling Units (MPDUs) or work force housing). It would be acceptable to have the affordable housing (in excess of what is required by law) placed on another site in Olney if there is joint development of both sites. The Council recommends that the Executive pursue this option first.

2. The size, scale, and design of the development preserve the sensitive environmental resources in accordance with a stormwater management concept approved by the County. The stormwater management concept must include measures that are designed to enhance natural storm water filtration and recharge.
3. The density of development and resulting population increase does not overwhelm the area's already severely strained public facilities.
4. Lot sizes, the mix of housing types (single family detached duplexes, and townhouses excluding multi-family units), and the density are compatible with adjacent properties.
5. Commercial development is not appropriate for this site.

**Recommendations:**

1. Since it has been determined that the site is not needed for educational purposes, the site should be used for affordable housing designed to be compatible with the surrounding residential neighborhood. The site is currently zoned R-200 and is recommended for R-200/PD-3.
2. Include open space with an active recreational component as part of any future development on this site. Connect the open space to the adjoining residential community through the proposed network of trails and bikeways in the area.

In a memorandum dated March 29, 2010, (attached to the Technical Staff report), the Community Based Planning Division noted that the Council looked at three different zoning options for subject property during its deliberations on the 2005 Olney Master Plan: (1) the existing R-200 (up to 78 total units); (2) PD-3 (up to 117 total units), and (3) PD-4 (156 total units). The Council determined that the site was appropriate for PD-3, the zone sought by Applicant here, and included the guidance quoted above in the text of the Master Plan.

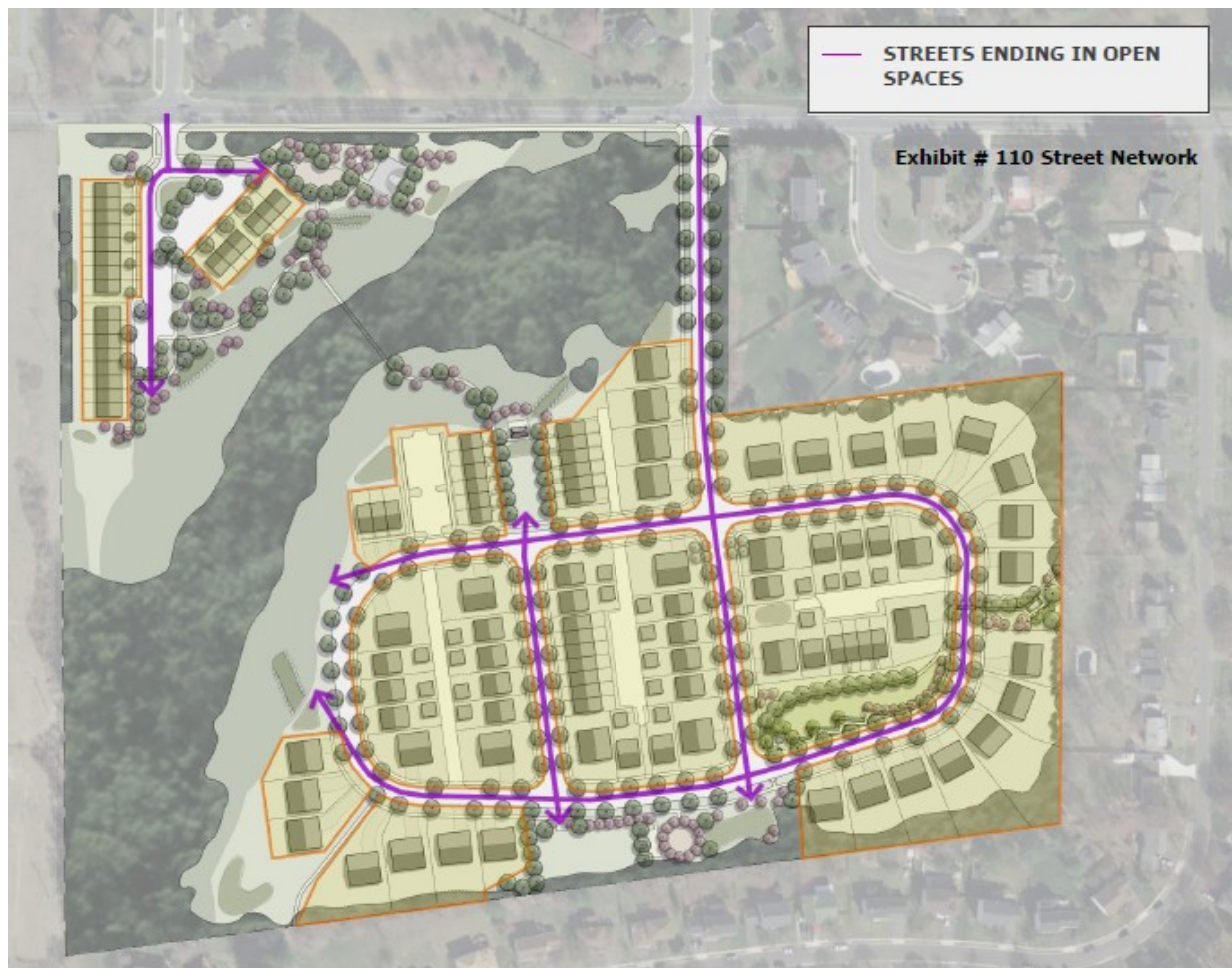
The revised development plan proposed by Applicant meets the five criteria outlined in the Master Plan:

1. At least half of the dwelling units will be MPDUs or WFH under the second binding element. Moreover, an even higher percentage of affordable housing (60%) is required by Applicant's agreement with the County. As stated by Joseph Giloley, on behalf of the Montgomery County

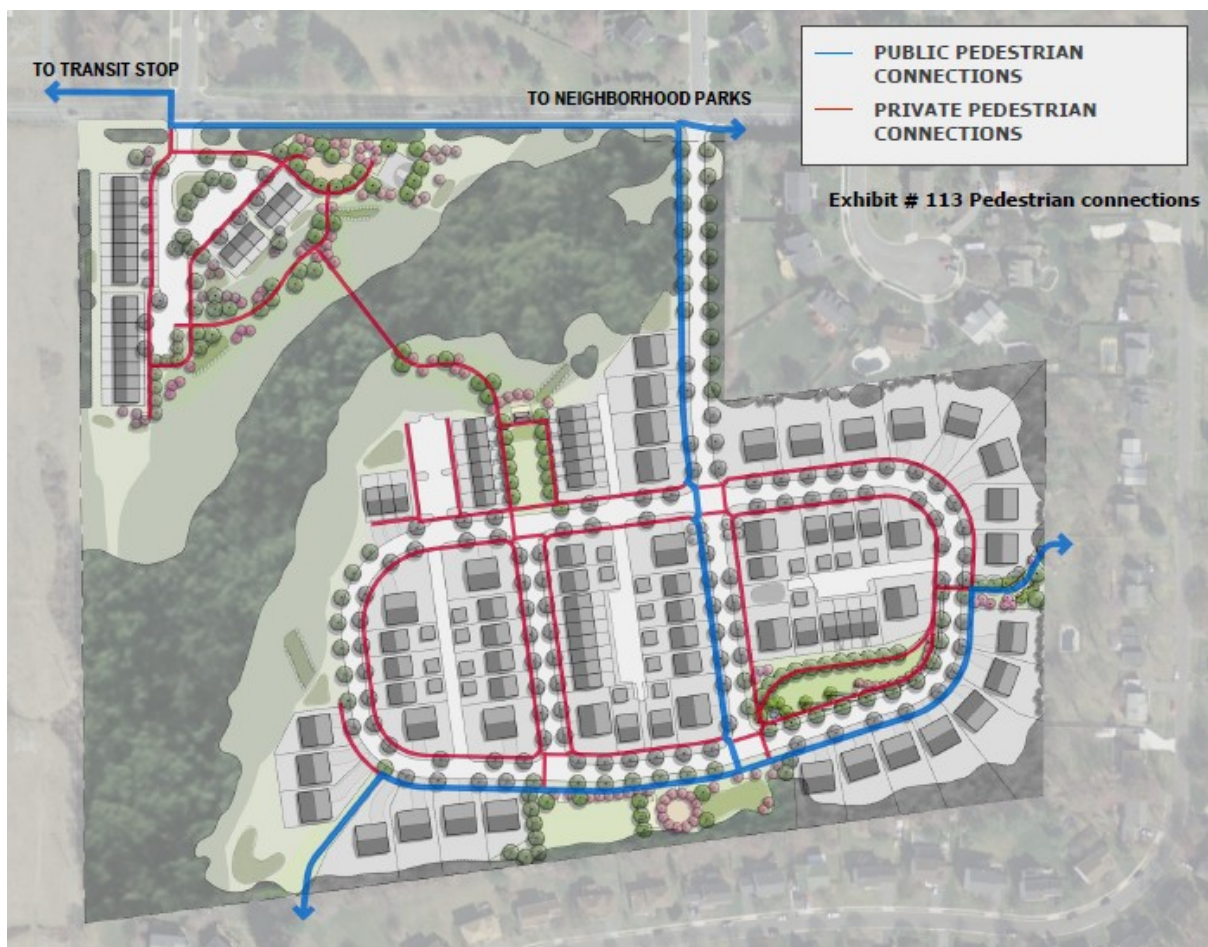
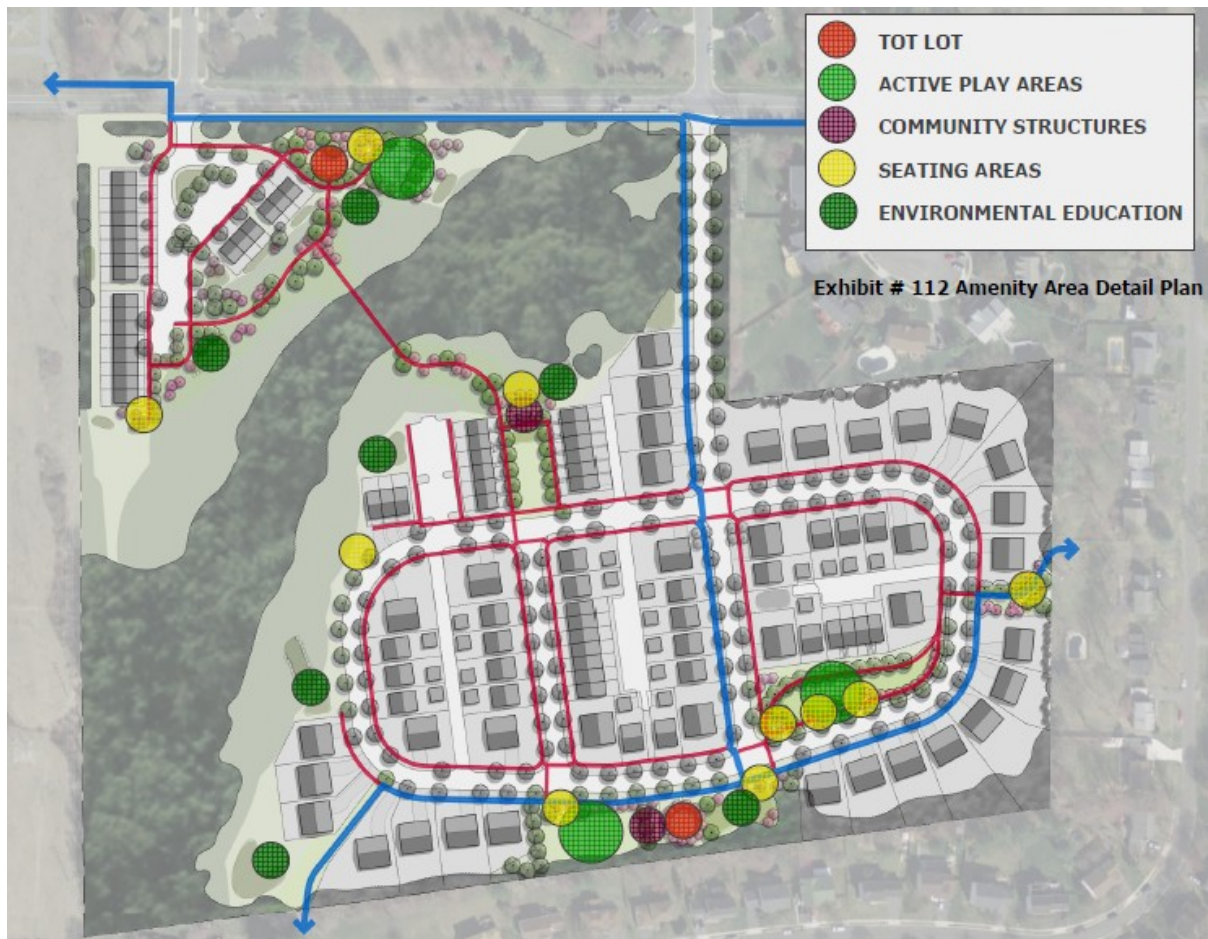
Department of Housing and Community Affairs, “This commitment of affordable units satisfies a requirement for affordable units in the Olney Master Plan.” Tr. 21.

2. The development has been designed to preserve the environmental features, as will be discussed later in this report.
3. The proposed density will be below the maximum permitted in the zone, and the unrebutted expert evidence from Technical Staff and Applicant’s experts is to the effect that the development will not overwhelm the available public facilities.
4. The lot sizes and the mix of housing types have been located so as to ensure compatibility with adjacent properties. The issue of whether “two over two” units are multi-family has been eliminated since Applicant agreed by binding element to preclude their use.
5. No commercial development is planned for the site.

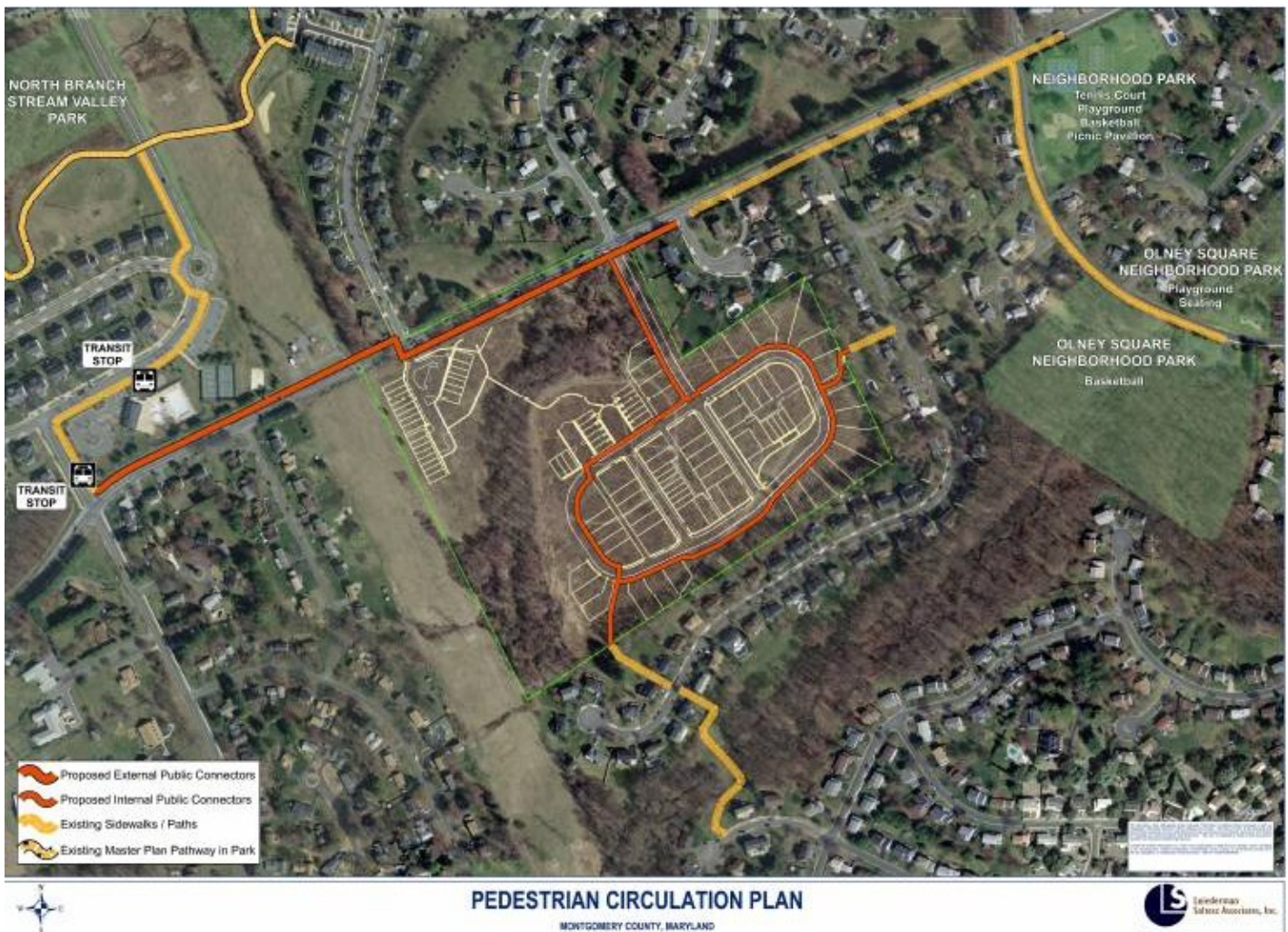
The recommendations of the Master Plan have also been followed. The development will provide affordable and compatible housing in the PD-3 Zone, and it has been designed with open space connected to the adjoining residential community through a proposed network of trails and bikeways, as shown in the following plans illustrating streets connecting open spaces (Exhibit 110), amenity areas (Exhibit 112) and pedestrian connections (Exhibits 113 and 94):











As noted in the Technical Staff report (Exhibit 65, pp. 6-7), Community-Based Planning staff found the proposed plan to be consistent with the Olney Master Plan and supports approval of the subject application, as did Technical Staff's Development Review Division. The Planning Board also found the application to be in substantial compliance with the Olney Master Plan. Exhibit 71. The opposition disagrees based on their concerns about compatibility and the adequacy of transportation facilities, both of which will be discussed in other parts of this report. Given the expert evidence regarding the adequacy of transportation facilities, the binding elements protecting compatibility and the unrebutted evidence that the development will provide the called-for affordable housing, the Hearing Examiner finds that the proposed development is consistent with the recommendations, guidelines and goals of the 2005 Olney Master Plan.

#### **4. Public Facilities (Traffic Impact, School Capacity and Water & Sewer Service)**

Zoning Ordinance §59-H-2.4(f), requires Applicant to produce “[s]ufficient information to demonstrate a reasonable probability that available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application is submitted.” Public facilities for transportation, schools and water and sewer service are treated under separate headings, below.

##### **a. Traffic Impact**

Concerns about traffic impacts were raised by a number of community witnesses. The point of their testimony was that there is already a lot of traffic on Bowie Mill Road, which is the only roadway accessing the subject site, and the addition of the proposed development will make it worse.<sup>7</sup> Tr. 212-213; 230-233; and 319-320. Numerous opposition letters raised the same point. *See e.g.*, April 14, 2010 letter of Briars Acres Community Association (BACA), Exhibit 66, and April 23, 2010 letter of the Greater Olney Civic Association (GOCA), Exhibit 69(b).

This issue was addressed both by Applicant’s expert in transportation planning, Edward Papazian (Exhibit 103 and Tr. 242-262), and by M-NCPPC’s transportation planning staff (Ex. 65).

Edward Papazian prepared a traffic impact study for the proposed re-zoning in accordance with the Planning Board’s local area transportation review and policy area mobility review, commonly referred to as the LATR and PAMR guidelines. The updated version of that report is contained in Exhibit 103. Mr. Papazian testified that Technical Staff identified the intersections to be studied, provided a list of approved and unbuilt developments and also agreed on the appropriate calculations associated with forecasting the future traffic.

Mr. Papazian performed peak period traffic counts in accordance with the Planning Board's guidelines. Those counts were conducted from 6:30 to 9:30 a.m. and 4:00 to 7:00 p.m. on a typical

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<sup>7</sup> Bowie Mill Road is a two-lane primary residential road with a minimum right-of-way width of 80 feet.

weekday at the study area intersections. From those counts, he identified the a.m. and p.m. peak hour traffic volumes at each of the intersections. He then calculated background traffic volumes.

Background traffic volume includes the forecasting of future traffic based on the approved and unbuilt developments in the area and any fully funded changes in the area roadway system that would affect the future traffic volumes. In this case, that includes the imminent construction and completion of the Inter-County Connector (ICC). After discussing this with Technical Staff, Mr. Papazian used background documents prepared by the State Highway Administration to identify the approximate levels of reduction on key roadways in the study area as a result of the construction of the Inter-County Connector. The ICC will open in the next year or two, and the resulting reduction is included in his forecast of future traffic.

As documented in his traffic impact study, there would be an expected reduction of at least 10 percent on key roadways in the area due to the construction and use of the Inter-County Connector. According to Mr. Papazian, Technical Staff agreed that a 10 percent reduction in through-traffic volumes and turning movements at key intersections would be appropriate for forecasting for future condition because of the effects of the ICC. That is the reason why there was a reduction in the critical lane volume at some intersections even after adding in background traffic volumes.

After the calculation of background traffic volumes, Mr. Papazian calculated the trip generation for the proposed residential units, and those calculations are listed on page 9 of the staff report (Exhibit 65):

Trip Generation	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
57 single-family detached units	14	40	54	40	23	63
36 single-family attached (townhouse) units	3	14	17	20	10	30
24 two-over-two units	2	10	12	13	7	20
<b>Total</b>	<b>19</b>	<b>64</b>	<b>83</b>	<b>73</b>	<b>40</b>	<b>113</b>

Source: Kimley-Horn and Associates, Inc. Traffic Impact Analysis; July 2009, Updated August 2009.



Mr. Papazian then assigned those trips to the area roadway system and performed capacity analysis at the area intersections. Capacity analysis determines the critical lane volumes (CLV) at the studied intersections and compares them to the congestion standard of the policy area where the intersections are located. Two policy areas are involved in this traffic study, the Olney Policy Area, which has a congestion standard of 1,450 CLV, and the Rural East Policy Area, which has a congestion standard of 1,350 CLV. Mr. Papazian's CLV findings are reported in a table in the Technical Staff report (Exhibit 65, p. 9):

**SUMMARY OF CAPACITY CALCULATIONS  
PROPOSED BOWIE MILL PROPERTY DEVELOPMENT**

Intersection	Traffic Conditions					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
MD 108/Queen Elizabeth Dr <sup>1</sup>	1,024	1,162	950	1,096	953	1,099
Bowie Mill Rd/Thornhurst Dr <sup>1</sup>	587	666	542	611	590	698
Bowie Mill Rd/Brightwood Rd <sup>1</sup>	640	713	592	659	647	731
Bowie Mill Rd/Muncaster Mill Rd <sup>2</sup>	1,371	1,209	1,251	1,120	1,265	1,137
Georgia Ave/Emory La <sup>1</sup>	1,259	1,448	1,184	1,394	1,195	1,395

Source: Kimley-Horn and Associates, Inc. Traffic Impact Analysis; July 2009, Updated August 2009.

<sup>1</sup> Olney Policy Area Congestion Standard: 1,450 CLV

<sup>2</sup> Rural East Policy Area Congestion Standard: 1,350 CLV

Mr. Papazian's findings indicate that the area intersections will operate at acceptable levels of service under total future conditions, and therefore, the LATR requirements are satisfied. The one intersection that is currently operating over the congestion standard in the morning peak hour (1,371 CLV at Bowie Mill Rd/Muncaster Mill Rd) will operate within that standard (at 1,265 CLV) even after the subject development is added in because of reductions effectuated by the ICC.<sup>8</sup>

Mr. Papazian also suggested that, at preliminary plan review, a signal warrant analysis will

<sup>8</sup> This conclusion was questioned by Matt Zaborsky of GOCA, who felt that the high tolls proposed for the ICC would discourage its use. Tr. 319-320. However, the only expert evidence (the testimony of Mr. Papazian and the Technical Staff report) concludes that the ICC would reduce traffic as indicated.

be performed to see if a traffic signal is justified for the intersection of Cashell and Bowie Mill Road (to the west of the subject property), which is presently governed by a four-way stop sign that causes some of the backup on Bowie Mill Road.

Mr. Papazian also reviewed the PAMR guidelines, for policy area mobility review. The Olney policy area, calls for a 10 percent partial mitigation of peak hour trips. That means, given the fact that the p.m. peak hour is estimated to generate about 113 trips, based upon the trip generation rates that Technical Staff directed him to utilize, 11 trips would have to be mitigated to satisfy PAMR. Applicant has proposed to meet this requirement, after discussing it with County Department of Transportation (DOT), by the installation of sidewalks along Bowie Mill Road. Those sidewalks are offsite, away from the site frontage, and would satisfy the PAMR requirements. This plan may be refined at the time of preliminary plan, but the County DOT agrees with the idea of using sidewalks as the basis for meeting the PAMR mitigation requirements.

Mr. Papazian indicated that his analyses were accepted by both the County DOT staff and the Park and Planning Transportation staff. They agree with his methodology and his findings. In his professional opinion, the transportation network in the surrounding area would be adequate to accommodate the vehicle trips generated by this new development.

In Mr. Papazian's opinion, the vehicle circulation system is well laid out. Multiple internal roadways will help to disperse the traffic. The intersections are at clear right angles, and the intersections and the junctions are well-spaced so that vehicles don't have to make sudden turns or dogleg movements. Also, there are pedestrian paths, so pedestrians will not be walking in the vehicle travel way. In his professional judgment, the vehicle and pedestrian circulation system would operate in a safe and efficient manner.

In response to a concern raised by Roger Segenish of BACA (Tr. 211), Mr. Papazian did not feel that the proposed private road which accesses Bowie Mill Road would create any dangers. The

County DOT has reviewed the proposed private road, and because Bowie Mill Road is a County road, they have the final say on any access connections to it.

Applicant's civil engineer, Ed Wallington, also did line-of-sight studies for the two proposed driveways. He testified that the new access points are located opposite existing access points on the other side of the road, and that is considered favorable. The general grade of the road is also quite favorable for sight distance. The 40 mile per hour speed limit that's posted here calls for a minimum sight distance of 325 feet from any of these intersections, and they measured out to about a 500-foot sight distance, or more, in all directions, according to Mr. Wallington. Thus, there is easily adequate distance for cars to pull safely in and out. Tr. 284-286. A sight-distance evaluation will also be done at preliminary plan of subdivision to make sure that the drivers entering and exiting the driveways have adequate sight distance along Bowie Mill Road.

Technical Staff reviewed the issue of transportation facilities in their report (Exhibit 65, pp. 8-10). Their conclusion was "that adequate solutions to be addressed at preliminary plan are available to satisfy or mitigate any transportation related potential impact concerning the proposed project . . ." Exhibit 65, p. 8. The County's DOT also indicated in a March 22, 2010 letter attached to the Technical Staff report that it does not object to the proposed rezoning.

Given the review by both M-NCPPC Technical Staff and DOT Staff, and the absence of any expert evidence to the contrary, the Hearing Examiner must find that there is a reasonable probability that available public transportation facilities and services will be adequate to serve the proposed development, in spite of the legitimate concerns of the neighbors.

b. School Capacity

The subject property is located within the Sherwood Cluster and is served by Olney Elementary School, Rosa Parks Middle School and Sherwood High School. In a letter dated March 26, 2010, Bruce H. Crispell, Director of Planning and Capital Programming for Montgomery County

Public Schools (MCPS), reported to Technical Staff that the proposed development is expected to generate approximately 37 elementary school, 16 middle school, and 20 high school students.

Mr. Crispell indicated that enrollment at Olney Elementary School is currently within capacity and is projected to stay within capacity. Enrollment at both Rosa Park Middle School and Sherwood High School currently exceeds capacity but is trending down and is projected to be within capacity beginning in 2011-2012.

Mr. Crispell concluded by stating that “[t]he current Growth Policy schools test (FY 2010) finds capacity adequate in the Sherwood Cluster.” (Attachment to Exhibit 65). Although Mr. Zaborsky of GOCA raised a concern about public school capacity given economic conditions (Tr. 320-321), there is no evidence in the record to suggest that school capacity will be inadequate.

Given the fact that capacity is adequate under the current Growth Policy schools test, the Hearing Examiner finds that it is reasonably probable that public school facilities and services will be adequate to serve the proposed development.

c. Water and Sewer Service

Edward Wallington, Applicant’s civil engineer, testified that there is ample infrastructure for water and sewer service. There is an existing eight-inch sewer line already on the property that runs through the stream buffer. According to Mr. Wallington, an eight-inch sewer is certainly sufficient for the additional units. Also, on Bowie Mill Road, there is a 24-inch water main that is quite large and is easily adequate for the water demands that would come with the proposed units. Attached to the Technical Staff report, there is a memo from the Washington Suburban Sanitary Commission (WSSC) noting that the impact of this project would be negligible. Tr. 286-287.

Given WSSC’s memorandum and Mr. Wallington’s expert testimony, the Hearing Examiner finds that Applicant has demonstrated a reasonable probability that available water and sewer



facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards.

## **5. Environmental Issues**

As stated in the Technical Staff report (Exhibit 65, p. 11), the Environmental Planning Staff supports the proposed rezoning and Development Plan. Applicant's Natural Resources Inventory/Forest Stand Delineation (NRI/FSD No. 420100430), was approved on November 17, 2009. Exhibits 120(b) and (c).

Applicant's civil engineer, Ed Wallington, observed that there is a "first-order stream" flowing through the middle of the site. Tr. 268. It breaks the site into two parcels for development. Since this stream drains to the north branch of the Rock Creek, it warrants 150-foot buffer on both sides of the stream. Thus, 11 acres of the site are encumbered within this buffer. There are some wetland areas within the buffer and a variety of trees, including about 6.8 acres of forest. Technical Staff did not indicate that the site is in either a special protection area or a primary management area.

### **a. Forest Conservation**

The preliminary forest conservation plan (PFCP) has been approved by the Planning Board, and was marked as Exhibit 105. The PFCP is reproduced below:

#### **FOREST CONSERVATION NOTES**

1. The Natural Resource Inventory/Forest Stand Delineation (420100430) was approved by MNCP&PC in November, 2009
2. The locations of the Significant and Specimen Trees are as shown on this plan.
3. A pre-construction meeting with MNCP&PC inspector will be held on-site, to review the limit of disturbance that has been flagged, before any clearing or grading begins. Individual trees to be saved/removed along the limits of disturbance shall be determined at this meeting. An approved tree care expert will determine the need for root pruning, crown reduction, aeration, and fertilization.
4. At the completion of construction MNCP&PC will inspect the site for compliance with the approved forest conservation plan. If site is in compliance, the inspector will authorize the removal of all temporary protection devices.
5. Reforestation or afforestation plantings must be accomplished no later than one year after completion of the development project. The landscape contractor shall determine the necessary planting area preparation.
6. The applicant is responsible for the maintenance of the plantings for a period of two years. Protective fencing or signage may be required during this time.
7. Contact MNCP&PC Inspector (301-495-4571) for site inspection after initial planting and at the end of the two year maintenance period.



SIGNIFICANT/SPECIMEN TREE TABLE

Tree Name	Tree Species	Tree Size	Tree Location	Tree Status	Tree Notes
1	Red maple	10' x 12"	Parcel 10	Retained	
2	Red maple	10' x 12"	Parcel 10	Retained	
3	Red maple	10' x 12"	Parcel 10	Retained	
4	Red maple	10' x 12"	Parcel 10	Retained	
5	Red maple	10' x 12"	Parcel 10	Retained	
6	Red maple	10' x 12"	Parcel 10	Retained	
7	Red maple	10' x 12"	Parcel 10	Retained	
8	Red maple	10' x 12"	Parcel 10	Retained	
9	Red maple	10' x 12"	Parcel 10	Retained	
10	Red maple	10' x 12"	Parcel 10	Retained	
11	Red maple	10' x 12"	Parcel 10	Retained	
12	Red maple	10' x 12"	Parcel 10	Retained	
13	Red maple	10' x 12"	Parcel 10	Retained	
14	Red maple	10' x 12"	Parcel 10	Retained	
15	Red maple	10' x 12"	Parcel 10	Retained	
16	Red maple	10' x 12"	Parcel 10	Retained	
17	Red maple	10' x 12"	Parcel 10	Retained	
18	Red maple	10' x 12"	Parcel 10	Retained	
19	Red maple	10' x 12"	Parcel 10	Retained	
20	Red maple	10' x 12"	Parcel 10	Retained	
21	Red maple	10' x 12"	Parcel 10	Retained	
22	Red maple	10' x 12"	Parcel 10	Retained	
23	Red maple	10' x 12"	Parcel 10	Retained	
24	Red maple	10' x 12"	Parcel 10	Retained	
25	Red maple	10' x 12"	Parcel 10	Retained	
26	Red maple	10' x 12"	Parcel 10	Retained	
27	Red maple	10' x 12"	Parcel 10	Retained	
28	Red maple	10' x 12"	Parcel 10	Retained	
29	Red maple	10' x 12"	Parcel 10	Retained	
30	Red maple	10' x 12"	Parcel 10	Retained	
31	Red maple	10' x 12"	Parcel 10	Retained	
32	Red maple	10' x 12"	Parcel 10	Retained	
33	Red maple	10' x 12"	Parcel 10	Retained	
34	Red maple	10' x 12"	Parcel 10	Retained	
35	Red maple	10' x 12"	Parcel 10	Retained	
36	Red maple	10' x 12"	Parcel 10	Retained	
37	Red maple	10' x 12"	Parcel 10	Retained	
38	Red maple	10' x 12"	Parcel 10	Retained	
39	Red maple	10' x 12"	Parcel 10	Retained	
40	Red maple	10' x 12"	Parcel 10	Retained	
41	Red maple	10' x 12"	Parcel 10	Retained	
42	Red maple	10' x 12"	Parcel 10	Retained	
43	Red maple	10' x 12"	Parcel 10	Retained	
44	Red maple	10' x 12"	Parcel 10	Retained	
45	Red maple	10' x 12"	Parcel 10	Retained	
46	Red maple	10' x 12"	Parcel 10	Retained	
47	Red maple	10' x 12"	Parcel 10	Retained	
48	Red maple	10' x 12"	Parcel 10	Retained	
49	Red maple	10' x 12"	Parcel 10	Retained	
50	Red maple	10' x 12"	Parcel 10	Retained	
51	Red maple	10' x 12"	Parcel 10	Retained	

## LEGEND

FOREST CONSERVATION DATA TABLE		
Bowie Mill Road		
		acres
NET TRACT ACREAGE		32.74
LAND USE CATEGORY		HDR
TOTAL EXISTING FOREST		6.79
FOREST RETAINED		6.02
FOREST CLEARED		0.77
WETLANDS		
	Total Acreage	1.20
	Forest Cleared	0.00
	Forest Retained	1.20
	Planting	0.00
100 YEAR-FLOODPLAIN		
	Total Acreage	0.00
	Forest Cleared	0.00
	Forest Retained	0.00
	Planting	0.00
STREAM VALLEY BUFFER		
	Total Acreage	10.96
	Total Forested SVB	6.23
	Forest Cleared	0.21
	Forest Retained	6.02
	Planting	3.14
PRIORITY AREAS		
	Total Acreage	10.96
	Forest Cleared	0.21
	Forest Retained	6.02
	Priority Planting	3.14
LINEAR FEET OF STREAM		1615
AV. LINEAR FEET OF STREAM BUFFER WIDTH		150.00
FOREST PLANTING REQUIRED		1.06
PLANTING PROVIDED		3.14
LANDSCAPE CREDIT TAKEN		0.00

 	WATERS OF THE US (Jurisdiction as labeled)
 	STREAM VALLEY BUFFER
 	100 YEAR FLOODPLAIN LIMITS (Source)
 	NON-TIDAL WETLANDS BUFFER
 	NON-TIDAL WETLANDS BOUNDARY (Source)
 	SPECIMEN TREE (Approximate location) (Root zone shows for retained trees near development)
	SPECIMEN TREE TO BE REMOVED
	EXISTING TREE LINE
	FOREST PRESERVATION
	FOREST CLEARING
	PROPOSED PLANTING
	PROPERTY BOUNDARY



FOREST CONSERVATION WORKSHEET							
Bowie Mill PROPERTY (LSA # 06753100)							
						5-Aug-02	
NET TRACT AREA:							
A. Total tract area ...						32.74	
B. Land dedication acres (parks, county facility, etc.) ...						0.00	
C. Land dedication for roads or utilities (not being constructed by this plan) ...						0.00	
D. Area to remain in commercial agricultural production/use ...						0.00	
E. Other deductions (specify) .....						0.00	
F. Net Tract Area .....						32.74	
LAND USE CATEGORY: (from Trees Technical Manual)							
Input the number "1" under the appropriate land use, limit to only one entry.							
	ARA	MDR	IDA	HDR	MPD	CIA	
	0	0	0	1	0	0	
G. Afforestation Threshold ...						15% x F =	4.91
H. Conservation Threshold ...						20% x F =	6.55
EXISTING FOREST COVER:							
I. Existing forest cover .....						6.79	
J. Area of forest above afforestation threshold .....						1.88	
K. Area of forest above conservation threshold .....						0.24	
BREAK EVEN POINT:							
L. Forest retention above threshold with no mitigation ....=						6.60	
M. Clearing permitted without mitigation .....						0.19	
PROPOSED FOREST CLEARING:							
N. Total area of forest to be cleared .....						0.77	
O. Total area of forest to be retained .....						6.02	
PLANTING REQUIREMENTS:							
P. Reforestation for clearing above conservation threshold ....=						0.06	
Q. Reforestation for clearing below conservation threshold ....=						1.06	
R. Credit for retention above conservation threshold .....						0.00	
S. Total reforestation required .....						1.12	
T. Total afforestation required .....						0.00	
U. Credit for landscaping (may not exceed 20% of "S") .....						0.00	
V. Total reforestation and afforestation required .....						1.12	

The PFCP shows only 0.21 acres of forest clearing and 6.02 acres of forest retention. There will also be 3.14 acres of additional planting. The Planning Board will take action on the Final Forest Conservation Plan with the Preliminary Plan of Subdivision.

b. Stormwater Management

Mr. Wallington introduced an updated stormwater management concept plan as Exhibit 106. It was approved by the Department of Permitting Services (DPS) on March 18, 2010, and the approval letter is attached to the Technical Staff report.

Mr. Wallington testified that the site will comply with the new state stormwater management regulations (the Maryland Department of the Environment 2007 Stormwater Management Regulations), referred to as the environmental site design (“ESD”) approach. The main difference between past practices and the new regulations is that the past practices were geared more around centralized facilities. The new regulations require treatment of water near where it falls with multiple facilities, so for sites such as this one, there will be about 40 to 50 sub-drainage areas, each one analyzed on its own and with a stormwater management feature or facility to address the controls. The Master Plan also calls for maximizing filtration and recharge. All of these facilities employ filtration and recharge, getting the water back into the ground near where it falls, so it meets this requirement. It will generally decrease the runoff from this site into the surrounding community. Tr. 273-281.

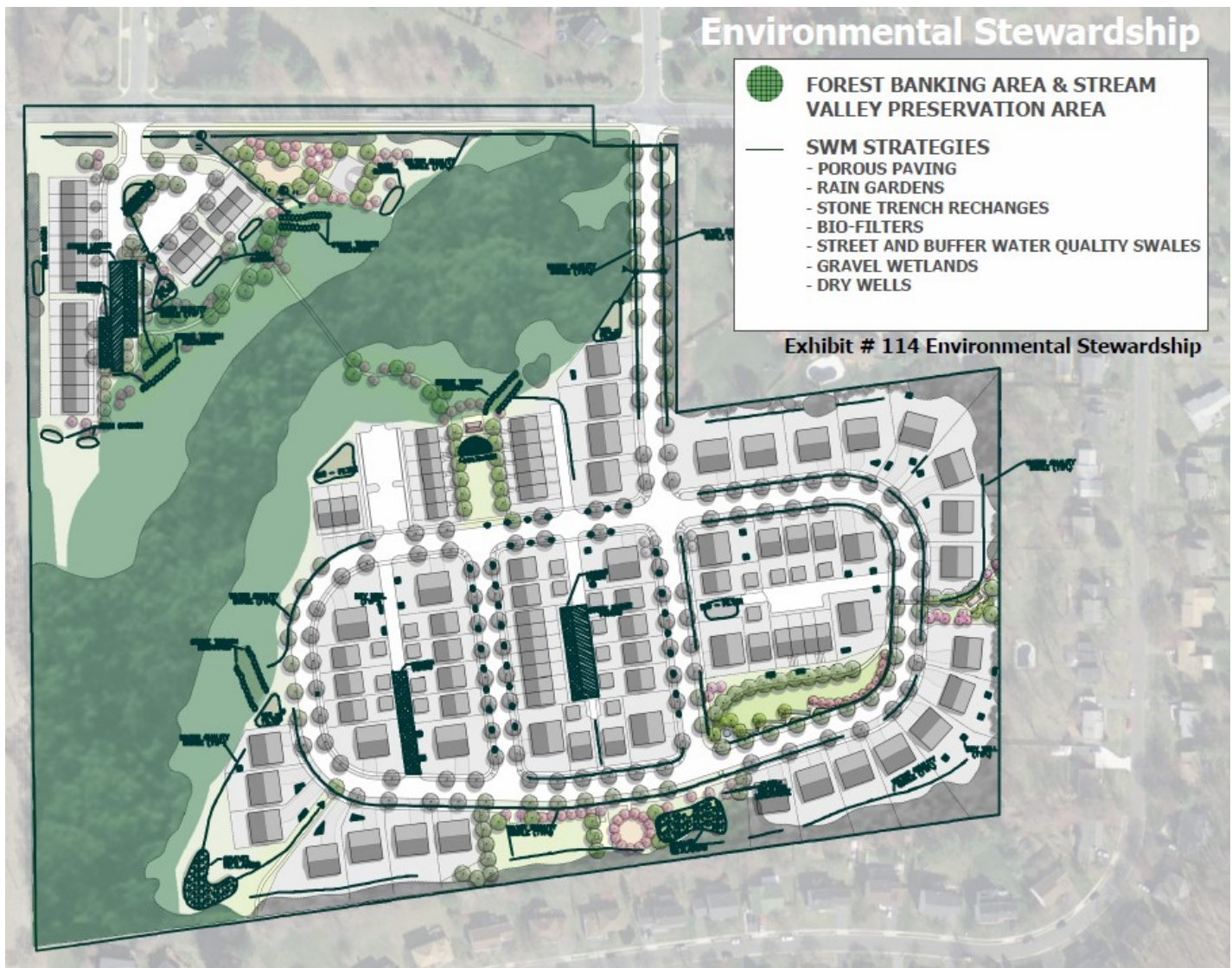
As noted by Technical Staff, the stormwater management concept plan will be further refined at subdivision.<sup>9</sup> Exhibit 65, pp. 11-12.

Applicant introduced an “Environmental Stewardship” exhibit to demonstrate its sensitivity to environmental concerns. It shows the forest banking and stream valley preservation areas, as well as the various stormwater management strategies. Exhibit 114 is reproduced on the next page:

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<sup>9</sup> There is also a 40-foot wide gas transmission line and related easement along the southern portion of the site. The Applicant has configured the proposed residential lots so that the gas line itself lies outside proposed lots, although portions of the easement for the gas line lie within the lots. The Development Plan shows house structures no closer than 10 feet from the edge of the gas line easement. To minimize conflicts that might arise from homeowners’ use of their properties with the gas line itself or future maintenance activities by the gas line company, staff believes the location of the gas line outside residential lots should be carried forward on the preliminary and site plans. In addition, Staff feels that the separation of the gas line easement from residential structures as shown in the Development Plan should be the minimum required in the preliminary and site plans.





In sum, Applicant has demonstrated sensitivity to environmental concerns, as recommended by the Master Plan, and Technical Staff reported no environmental issues warranting denial of this application. The entire record supports a finding that Applicant's plans take due care to protect the environment.

### **E. Compatibility and Neighborhood Concerns**

The overwhelming response of the neighborhood to the proposed rezoning has been opposition. The application is supported by the County, which owns the land and wants to use it to provide a significant amount of affordable housing. Tr. 19-36. It is also supported by the

Affordable Housing Conference of Montgomery County in a letter dated May 4, 2010 (Exhibit 117). The People's Counsel, participated in the hearing and supported the application conditioned upon elimination of the "two over two" units from the plan. Tr. 334-335.

All other responses from the community have been in opposition. These include over eighty opposition letters, an opposition petition signed by 21 adjacent and confronting property owners (Exhibit 75), and the opposition testimony of four local civic and homeowners associations – the Olney Coalition; Briars Acres Community Association; Oatland Farm HOA; and the Greater Olney Civic Association. It should be said at the outset that the decision on a zoning application "is not a plebiscite." *Rockville Fuel v. Board of Appeals*, 257 Md. 183, 192, 262 A.2d 499, 504 (1970). It is not the Hearing Examiner's function to determine which position is more popular, but rather to assess the Applicant's proposal against the specific criteria established by the Zoning Ordinance, and to evaluate compatibility and the public interest. The opposition in this case centers around compatibility and traffic concerns.

The traffic issues were discussed at great length in Part III. D. 4. a. of this report, and therefore will not be addressed in this section. Based on the evidence, the Hearing Examiner concluded that, despite legitimate concerns about traffic snarls on Bowie Mill Road, Applicant had satisfied the statutory test regarding the adequacy of transportation facilities to serve the proposed development.

Although much of the compatibility concern involved Applicant's plan to develop 24 "two over two" townhouse units on the site, Applicant's agreement to preclude such units by a binding element did not eliminate the opposition, as evidenced by post-hearing letters from the Olney Coalition (Exhibit 126) and GOCA (Exhibit 127). Both organizations continue to oppose based on traffic and compatibility concerns.

The compatibility concerns of the neighbors were reflected in the testimony on behalf of the aforementioned organizations. Barbara Falcigno, President, Olney Coalition, testified that the overall plan is not compatible with the adjacent neighborhoods, the overall neighborhood or, more specifically, the semi-rural suburban nature of Olney. The Olney Coalition feels that the PD-3 Zone, at the full density permitted (117 units), is too concentrated for the area, which is distant from the Olney town center and therefore should have a more rural feeling. Also, the Coalition believes the proposed development would not be consistent with the Olney Master Plan's specifics about the housing types (*i.e.*, the two-over-two units), and the proposal would result in poor integration of the market in affordable units. She also disagreed with the style of housing proposed, which she characterized as "neo-traditional." Tr. 154-199.

On the other hand, Ms. Falcigno concluded with the following statement (Tr. 191):

. . . I want to compliment Elm Street and John Clarke and others. They've, you know, worked with the community. They came out endless meetings with sometimes very angry people and other than the density issue, I think that they made a good plan, they took in the trees and, you know, a lot of the issues. They tried to keep the open space accessible to everybody. So we're closer together than farther apart, I think, in this but when you have to make a recommendation upon whether or not this property should be re-zoned, you're looking at the plan that they're proposing, and so we're trying to put out that lose a few units, get rid of the two over twos, maybe even change some of the design types, there could be a really good plan there that could work but perhaps they need, it needs to be revisited and redesigned.

Much of what the Olney Coalition sought has come to pass – a few units have been removed from the mix (down from a maximum of 117 to a maximum of 114) and the criticized two-over-two units have been banished. Although during the hearing, Ms. Falcigno indicated that the majority of the Olney Coalition might support the rezoning if those changes were made (Tr. 220-221), her post-hearing letter (Exhibit 126) does not retreat from her earlier opposition.

Some of the considerations raised by Ms. Falcigno and other witnesses in their testimony (which is summarized in Part IV of this report), such as housing design and dispersal of MPDUs, are details best reserved for the Planning Board at Site Plan review. The Council's function on a

rezoning application is a broader review to ensure compliance with the purpose of the zone, general compatibility and the public interest. While the Hearing Examiner understands the compatibility concerns raised by the Olney Coalition and the other opponents, the record in this case establishes that Applicant is proposing the type of development which the Master Plan envisioned, as discussed earlier in this report.

Although the opposition argues that this proposal would yield a development too dense to comport with the appropriate development of the Olney periphery, it is the Master Plan that generally sets that standard, and the Master Plan specifically recommends the PD-3 Zone for this site. Both Technical Staff and the Planning Board found the proposal to be compatible with the area, even at a density greater than Applicant currently agrees to, and there was no expert testimony to the contrary. The Hearing Examiner is also persuaded by the fact that other developments of roughly equivalent density have been permitted in this area (*See* Exhibit 93) and that Applicant has significantly improved compatibility by precluding the two-over-two units and by specifying single-family detached homes along the development's periphery.

Some of the features sought by the neighbors may well become reality after site plan and subdivision reviews, but as suggested by both Technical Staff and the Planning Board, those design decisions are best left to those later stages of the development. At this stage, the Hearing Examiner finds that the great weight of the evidence (the Technical Staff report, the Planning Board evaluation and all the expert evidence in the record) supports the conclusion that the proposed development will be compatible with the surrounding development.

#### **IV. SUMMARY OF THE HEARING**

Applicant called five witnesses, Robert Goldman, President/CEO of the Montgomery Housing Partnership, a partner in Bowie Mill Road, LLC, the Applicant; John M. Clarke, vice-president and regional partner of Elm Street Development, LC, also a partner in Bowie Mill Road,



LLC, the Applicant; Edward Papazian, an expert in traffic engineering and transportation planning; Edward Wallington, a civil engineer; and Trini Rodriguez, a land planner and landscape architect. Joseph Giloley of the County's Department of Housing and Community Affairs also testified in support of the application.

Five opposition witnesses testified, including four from local civic and homeowners associations – Barbara Falcigno, President, Olney Coalition; Roger Seganish, President, Briars Acres Community Association; Robin Shea, President, Oatland Farm HOA; and Matt Zaborsky, President, Greater Olney Civic Association. Howard Greif, a resident the Norbeck Grove community, which is located about a half a mile northwest of the subject site, also testified in opposition. In addition, some opposition letters and an opposition petition were filed at the hearing. Tr. 15-18. The petition was signed by 21 adjacent and confronting property owners, stating their opposition to the rezoning because they “feel the density of the current plan is not compatible with the adjacent communities.” Exhibit 75.

Martin Klauber, Esquire, the People's Counsel, participated in the hearing and supported the application conditioned upon elimination of the “two over two” units from the plan. Tr. 334-335.

Much of the testimony concerned the “two over two” units. Since that issue has been mooted by Applicant's agreement to a binding element precluding that type of construction, some of that testimony will not be included in the summary or will be briefly referenced.

### **A. Applicant's Case**

#### **1. Robert Goldman (Tr. 37-47):**

Robert Goldman testified that he is the President and CEO of the Montgomery Housing Partnership, a private, non-profit organization which is a partner in Bowie Mill Road, LLC, the Applicant. Montgomery Housing Partnership develops affordable housing in Montgomery County, typically in mixed income projects, and it owns approximately 1,100 units in Montgomery County.

Montgomery Housing Partnership joined with Elm Street Development to bid in response to the County's REOI (Request for Expression of Interest) to develop the subject site with 60% affordable housing. He felt that the combination of having an experienced affordable housing developer together with an experienced market rate private developer would provide a strong application proposal. According to Mr. Goldman, the County has a strong need for affordable housing. Montgomery Housing Partnership was formed over 20 years ago because of the crisis over the lack of affordable housing. That crisis continues, especially due to economic situation now. A number of years ago, the County, in an effort to further promote affordable housing, set out a policy to find parcels of land for the development of affordable housing.

In Mr. Goldman's opinion, this property satisfies that goal of promoting affordable housing because it would provide 30 percent MPDU affordable units and 30 percent workforce units.

2. John M. Clarke (Tr. 70-154):

John M. Clark testified that he is vice-president and regional partner of Elm Street Development, LC, a partner in Bowie Mill Road, LLC, the Applicant. The Applicant will not own or rent any of the proposed units. They will all be sold to third parties, who can then sell them or own them and rent them out. Within the MPDU law, a certain percentage of units are offered to nonprofits or the Housing Opportunities Commission.

Mr. Clarke discussed the selection of the site and the design of Applicant's proposal in response to the County's REOI. Applicant is trying to create a community where, in conjunction with the PD-3 purpose clause, it will provide a lot of housing variety choices and fulfill what is allowed in the Master Plan language. He described the proposed housing, using Exhibit 88, the illustrative unit mix exhibit. The effort is to build a comprehensive cohesive community with all the different housing types, incomes levels interspersed throughout the community so there wouldn't be all of one product type in a given area.

Mr. Clarke also enumerated the binding elements agreed to by Applicant, and he described how they and the other development plans will comply with the Master Plan recommendations.

He noted that Applicant has an approved stormwater management concept from the County but additionally, it very sensitive to the environmental area that runs diagonally from the top center of the site down to the lower left-hand corner. There are trees on the site located in the environmental buffer area, in the stream valley buffer. Most of the remainder of the site is in a meadow state and under the County's forest conservation law, there is a requirement to plant some trees, as shown in Exhibit No. 89. Moreover, the green area will be expanded or supplemented over and above the minimum that would be required under the law. There were six or seven acres of trees on the site, and there will be about 10 acres after development.

Mr. Clarke noted that there will be no commercial development on this site. He described how compatibility with adjacent homes would be ensured by placing single-family, detached dwelling units on lots of a compatible size along Darnell Drive and Daly Manor Place.

Mr. Clarke disagreed with Mr. Greif's testimony equating MPDUs with behavioral problems, and indicated that many communities with MPDUs do not have such problems. The problems Mr. Greif observed can be largely avoided by having the same management company in place for all the units. The draft HOA documents that Applicant submitted provide a mechanism to ensure the perpetual maintenance of all the common areas and provide the vehicle for good management of the MPDUs units and any units that are under the programs of affordable housing. He also noted that nearly 30% of the units in Mr. Greif's development were two-over-two units, so it is not comparable to the plans for the subject site. [Mr. Clarke's lengthy discussion of two-over-two units is not summarized here because the issue is moot.] Mr. Clarke indicated that eliminating two-over-two units might result in a reduction in the number of units by eight, but reconfiguring some of the plans may regain some or all of those units.

Mr. Clarke feels that the density proposed here is precisely what the Master Plan contemplated when it recommended the PD-3 Zone for the subject site. He also introduced an exhibit showing densities of other developments in the Olney area to demonstrate that they had comparable or greater densities, even if one excluded the open areas (Exhibit 93).

Mr. Clarke further testified that the community will have a distinctive visual character based on the mix of product type and the choices that folks will have in comparison to maybe a standard R-200 plan or a normal development under an MPDU optional method. He also noted that the community will create a maximum of social interaction through the inter-connectivity of the pedestrian connections to the adjacent properties and through offsite pedestrian inter-connectivity, as shown in Exhibit 94.

According to Mr. Clarke, even though the community would be divided by the stream valley buffer, the two parts would be connected by a path running about 380 to 400 feet, and would be viewed as one community.

3. Edward Papazian (Tr. 242-262):

Edward Papazian testified as an expert in transportation planning and traffic engineering. He prepared a traffic impact study for the proposed re-zoning in accordance with the Planning Board's local area transportation review and policy area mobility review, commonly referred to as the LATR and PAMR guidelines. Technical Staff identified the intersections to be studied, provided a list of approved and unbuilt developments and also agreed on calculations associated with the forecasting of future traffic.

Mr. Papazian performed peak period traffic counts in accordance with the Planning Board's guidelines. Those counts were conducted from 6:30 to 9:30 a.m. and 4:00 to 7:00 p.m. on a typical weekday at the study area intersections. From those counts, he identified the a.m. and p.m. peak hour traffic volumes at each of the intersections. He then calculated background traffic volumes.



Background traffic volume includes the forecasting of future traffic based on the approved and unbuilt developments in the area and any fully funded changes in the area roadway system that would affect the future traffic volumes. In this case, that includes the imminent construction and completion of the inter-county connector (ICC). After discussing this with Technical Staff, Mr. Papazian used background documents prepared by the State Highway Administration to identify the approximate levels of reduction on key roadways in the study area as a result of the construction of the inter-county connector.

As documented in his traffic impact study (Exhibit 15), there would be an expected reduction of at least 10 percent on key roadways in the area due to the impacts of the construction of the inter-county connector. According to Mr. Papazian, Technical Staff agreed that a 10 percent reduction in through-traffic volumes and turning movements at key intersections would be appropriate for forecasting for future condition because of the effects of the ICC. That is the reason why, in some instances, there was a reduction in the critical lane volume when you compare background traffic volumes with the existing traffic volumes at key intersections. Even with the addition of approved and unbuilt developments, there would be a reduction of turning movement counts at several key intersections. The ICC will open in the next year or two, and the resulting reduction is included in his forecast of future traffic.

After the calculation of background traffic volumes, Mr. Papazian calculated the trip generation for the proposed residential units, and those calculations are listed on page 9 of the staff report. He did the calculation based upon the LATR/PAMR guidelines trip generation rates for the different types of residential units for the 117 residential units, then assigned those trips to the area roadway system and performed capacity analyses at the area intersections. His findings indicate that the area intersections will operate at acceptable levels of service. Under total future conditions, they will meet the LATR standards for the different intersections and therefore, the LATR requirements

are satisfied.

Mr. Papazian also reviewed the PAMR guidelines, for policy area mobility review. The Olney policy area, calls for a 10 percent partial mitigation of peak hour trips. That means given the fact that the p.m. peak hour is estimated to generate about 113 trips, based upon the trip generation rates that Technical Staff directed him to utilize, 11 trips would have to be mitigated to satisfy PAMR. Applicant has proposed to meet this requirement, after discussing it with County DOT, by the installation of sidewalks along Bowie Mill Road. Those sidewalks are offsite, away from the site frontage, and would satisfy the PAMR requirements. This plan may be refined at the time of preliminary plan, but the County DOT agrees with the idea of using sidewalks as the basis for meeting the PAMR mitigation requirements.

Mr. Papazian indicated that his analyses were accepted by both the County DOT staff and the Park and Planning Transportation staff. They agree with his methodology and his findings. In his professional opinion, the transportation network in the surrounding area would be adequate to accommodate the vehicle trips generated by this new development.

In response to a question about traffic jams along Bowie Mill Road during the peak period of the morning, Mr. Papazian stated that the intersection of Muncaster Mill Road and Bowie Mill Road carries sizeable amounts of traffic, but it would be within the acceptable levels in the future partly because of the effects of the ICC. Part of the idea of the Inter-County Connector is to provide some relief to roadways such as Muncaster Mill Road. He also suggested that, at the time of preliminary plan of subdivision approval, they will perform a signal warrant analysis to see if a traffic signal is justified for the intersection of Cashell and Wickham and Bowie Mill Road (to the west of the subject property), which is presently governed by a four-way stop sign that causes of some of the backup.

In Mr. Papazian's opinion, the vehicle circulation system is well laid out. There are multiple

roadways so that it helps to disperse the traffic. The intersections are at clear right angles, and the intersections and the junctions are well-spaced apart so that vehicles don't have to make sudden turns or a dog leg movement. Also, there are pedestrian paths, so pedestrians will not be walking in the vehicle travel way. So in his professional judgment, the vehicle and pedestrian circulation system would operate in a safe and efficient manner.

Mr. Papazian did not feel that the proposed private road would create any dangers. The County DOT has reviewed this, and because Bowie Mill Road is a County road, they have the final say on any access connections to Bowie Mill Road. They have called for a sight-distance evaluation which will also be done at preliminary plan at subdivision to make sure that the drivers entering and exiting have adequate sight distance along Bowie Mill Road at the driveway.

An updated, August 2009 traffic report was received as Exhibit 103. It doesn't change the results of his analysis.

4. Edward Wallington (Tr. 263-289):

Edward Wallington testified as an expert in as an expert in civil engineering. He indicated that the NRI/FSD was approved last November 2009 by Park and Planning staff.

Mr. Wallington stated that a first order stream that is located in the middle of the site. It breaks the site into two parcels for development. Since this stream drains to the north branch of the Rock Creek, it warrants 150-foot buffer both sides of the stream. Thus, 11 acres of the site are encumbered within this buffer. There are some wetland areas within the buffer and a variety of trees. There's just under seven acres of forest, 6.8 acres of forest. The rest will be planted, and Applicant will locate large trees around the perimeter of the site to help with compatibility concerns. The preliminary forest conservation plan has been approved by the Planning Board, and was marked as Exhibit 105.

An updated stormwater management concept plan was introduced as Exhibit 106. It was

approved by DPS on March 18, 2010, and the approval letter is attached to the Technical Staff report. The site will comply with the new stormwater management regulations under the Maryland Department Environment 2007 Stormwater Management Regulations, referred to as environmental site design regulations. the main difference between past practices and the new regs is the past practices were geared more around centralized facilities. The new regs treat water near where it falls with multiple facilities, so for sites such as this one, there will be about 40 to 50 sub-drainage areas, each one analyzed on its own and with a stormwater management feature or facility to address the controls.

One of the line items in the Master Plan requires maximizing filtration and recharge. All of these facilities employ filtration and recharge, getting the water back into the ground near where it falls, so it meets this requirement. It will generally decrease the runoff from this site into the surrounding community.

Mr. Wallington further testified that the PD Zone requires a 30 percent green space minimum and Applicant will provided 45 percent green space, easily exceeding the 30 percent minimum. Some of the compatibility issues have been talked about in the past. The first 100 feet around the property is restricted to detached units. There is also a building height requirement stated in the PD Zone. The height will not exceed 30 feet. Applicant will set the homes all back 30 feet, as they need to be set back at least one foot for every one foot of building height. There will also be some dedication along Bowie Mill Road to bring it in conformance with the Master Plan objective of a minimum 80-foot right-of-way, and Streets A, B and C will all be dedicated to public use, with the amount of dedication to be determined at site plan and preliminary plan reivew.

Mr. Wallington also did some line of sight studies for the two driveways. The new access points are located opposite existing access points on the other side of the road, and that's considered favorable. The general grade of the road is quite favorable for sight distance. The 40 mile per hour



speed limit that's posted here calls for a minimum sight distance of 325 feet from any of these intersections, and they measured out to about a 500-foot sight distance, or more, in all directions. Thus, there is easily adequate distance for cars to pull safely in and out.

Mr. Wallington further testified that there is ample infrastructure for water and sewer. There is an existing eight-inch sewer line already on the property that runs through the stream buffer. This is favorable because the existing sewer can be used, and an eight-inch sewer is certainly sufficient for the additional units. Also, on Bowie Mill Road, there's a 24-inch water main that is quite large and is easily adequate for the water demands that would come with 117 units. Attached to the staff report, there's a memo from WSSC noting that the impact of this project would be negligible on water and sewer infrastructure.

According to Mr. Wallington, the existing grading conditions at the site are actually quite favorable for grading the new street and lot pattern proposed here. The existing slopes are 2 to 10 percent, so streets will be gently graded and generally follow existing topographic conditions with very little cuts or fills. One of the objectives of the environmental site design is to avoid large cuts or fills on a project and try and follow the existing grading conditions as much as possible and minimize grading. On this site, Applicant will be able to follow existing grading patterns. In Mr. Wallington's professional opinion, from an engineering perspective, this development plan will result in a safe, adequate and efficient form of development for this property and the proposed community.

5. Trini Rodriguez (Tr. 290-314):

Trini Rodriguez testified as an expert land planner and landscape architect. She reviewed the criteria set forth in the Master Plan, and noted that an open space is conveniently located and provides both passive but active uses that all the community could use. Ms. Rodriguez stated that compatibility is how the development interfaces with the surrounding community. To enhance

compatibility, there should be like units at the perimeters and then diversity in the middle.

Ms. Rodriguez used Applicant's "Urban Fabric" plan (Exhibit 109) to show the compatible design of placing single-family detached homes on the perimeter, adjacent to existing single-family homes. In this plan, the homes on the perimeter are the more standard sort of front-loaded houses, with the garages on the sides. The project has also been designed with open space connected to the adjoining residential community through a proposed network of trails and bikeways, as shown in plans illustrating streets connecting open spaces (Exhibit 110), amenity areas (Exhibit 112) and pedestrian connections (Exhibits 113 and 94).

Applicant's environmental stewardship is demonstrated in Exhibit 114, including rain gardens, porous pavement, stone trenches, recharge areas, bio-filters, street and buffer water quality swells, gravel well, some dry wells, forest banking and the stream valley protection.

## **B. County Government Witness**

### Joseph Giloley (Tr. 19-36):

Joseph Giloley testified that he is the Chief of the Division of Housing and Code Enforcement with the Montgomery County Department of Housing and Community Affairs. He stated that he was appearing on behalf of the property owner, Montgomery County.

Mr. Giloley testified that Montgomery County has a policy of utilizing County-owned property to promote the goal of providing affordable housing. The property that is the subject of this local map amendment, as identified in the approved 2005 Olney Master Plan, is appropriate for a housing development including affordable housing, according to Mr. Giloley. The Olney Master Plan recommended that the full yield allowed by the PD-3 Zone would only be appropriate if several conditions were met including a requirement that at least half of the dwelling units would be affordable as moderately priced dwelling units or workforce housing units.

In order to find a developer for the site, the County issued a request for expression of interest [REOI] in the spring of 2007, and as a result of that request for expression of interest and an analysis of proposals, chose Bowie Mill Road, LLC, the joint venture of Elm Street Development, a private sector developer and Montgomery Housing partnership, a nonprofit affordable housing provider. The Applicant has signed a development agreement, an agreement of sale and purchase with the County which commits the Applicant to providing 40 percent market rate units, 30 percent moderately priced dwelling units and 30 percent workforce housing units, for a total of 60 percent affordable units on the site. This commitment of affordable units satisfies a requirement for affordable units in the Olney Master Plan.

Mr. Giloley further testified that approval of this local map amendment will enable the property to be developed with up to 117 units, which will result in 35 MPDUs and up to 35 workforce housing units. Under the current R-200 Zoning, a maximum of 78 units would be permitted, yielding only 23 MPDUs and 23 workforce housing units. Therefore, development of this property implements pertinent County policies in a manner and to a degree quite closely compatible with the County plans and policies that may be possible under other zoning categories per section 59-C-7.11 of the Zoning Ordinance.

According to Mr. Giloley, the subject zoning application is consistent with the County's development agreement, as outlined in the Planning Department's staff report. It's also consistent with all the requirements of the PD-3 Zone. The County strongly recommends approval of the Zoning application.

Mr. Giloley produced a copy of the development agreement and agreement of sale and purchase between Applicant and the County, with various attachments, including the REOI. The whole package was marked as Exhibit 84.

When asked on cross-examination why the County did not also put out an REOI for R-200

plans as well as for PD-3 plans, he replied that more affordable units can be provided under the PD-3 Zone, and the County wanted to maximize the number of housing units and thereby maximize affordability. He indicated that there was nothing in the development agreement or its attachments which specifies that the property should be developed with “two over two” housing units.

Mr. Giloley further testified that the REOI did not encourage the placement of the affordable housing on another site, a possibility suggested in the Master Plan when there is a joint development of both sites, because there was no other development that was going on at that point in the Olney area where the affordable housing could be placed.

According to Mr. Giloley, the REOI that is attached to Exhibit 84, was not written with knowledge of what developers might respond to it.

### **C. Community Witnesses**

#### **1. Barbara Falcigno, President, Olney Coalition (Tr. 154-199; 220-221):**

Barbara Falcigno testified that she is the President of the Olney Coalition. The Olney Coalition formed in 2003, and it represents over 3,000 households. It is comprised of Briars Acres, Oatland Farms, Norbeck Grove, Olney Square, Olney Acres, Manor Oaks and a few other communities. Its mission is to preserve the semi-rural residential character of the community and its qualities. The Coalition was very involved throughout the 2005 Olney Master Plan update.

Ms. Falcigno testified that the Olney Coalition feels that the overall plan is not compatible with the adjacent neighborhoods, the overall neighborhoods or, more specifically, the semi-rural suburban nature of Olney. Also, the coalition believes the proposed development would not be consistent with the Olney Master Plan’s specifics about the housing types, and the proposal would result in poor integration of the market in affordable units. [Much of her testimony addressed the “two-over-two” issues and her interpretation of the Council action on the Master Plan in that regard. Since there will be no two-over-two units, this testimony will not be fully summarized.]



Ms. Falcigno noted that the Olney Town Center is at the intersections of Route 108 and Georgia Avenue, also known as MD 97. She stated that the planning guideline calls for the density to be greater close to town center. Although there are some anomalies, such as Norbeck Grove, generally, density is reduced the farther one gets from the town center, and the more distant homes are actually on septic in RE-2 properties. Also, the MPDUs were unfortunately clustered in one part of Norbeck Grove, which has led to some of the problems there. Ms. Falcigno feels that although the subject site would spread the MPDUs out more, there would still not be enough dispersal.

There's still going to be a stick of townhouses that are all MPDUs. It's hard to do something with it because it's 60 percent affordable. You're really integrating market rates into the affordable as opposed to the affordable into the market rates. This is more, essentially, an affordable housing project. Tr. 163.

Ms. Falcigno did a Power-point presentation, which is contained in Exhibit 96, to support her argument that the planned development would not be compatible with Olney. Included are photos of homes near the subject site. According to Ms. Falcigno, "people live in Olney because they want that semi-rural suburban. They don't want to feel more urbanized. And that's going to come into the compatibility with the neo-traditional style housing." Tr. 166. In Ms. Falcigno's opinion, it's not the appropriate location for this type of housing. She also feels that it would be a much more successful community if the Applicant would incorporate the MPDUs throughout the community, including the detached houses.

Ms. Falcigno also expressed concerns about the percentage of affordable housing. She noted that there's a legal requirement of 12.5 percent on MPDUs, and the Olney Coalition understands the housing goals and is willing to accept twice the legal limit; however, it is concerned about the compatibility of the high percentage of affordable housing planned here and the issues that surrounding communities have been dealing with.

Ms. Falcigno introduced portions of two studies regarding MPDUs, one from Council Staff (Exhibit 98) and one from the Office of Legislative Oversight (OLO), Exhibit 99. The Council Staff

study mentions that “piggyback and back-to-back townhouses” may be less attractive to families with children and MPDUs located remotely on a site may be less attractive because of poor access to shopping, services and transportation. The OLO study discusses the benefits of dispersal of MPDUs v. the advantages of clustering MPDUs. In Ms. Falcigno’s opinion, common sense tells us that a successful community spreads them out. She also introduced the Olney Coalition’s suggested redesign of the project as Exhibit 100.

Ms. Falcigno concluded with the following statement (Tr. 191):

. . . I want to compliment Elm Street and John Clarke and others. They've, you know, worked with the community. They came out endless meetings with sometimes very angry people and other than the density issue, I think that they made a good plan, they took in the trees and, you know, a lot of the issues. They tried to keep the open space accessible to everybody. So we're closer together than farther apart, I think, in this but when you have to make a recommendation upon whether or not this property should be re-zoned, you're looking at the plan that they're proposing, and so we're trying to put out that lose a few units, get rid of the two over twos, maybe even change some of the design types, there could be a really good plan there that could work but perhaps they need, it needs to be revisited and redesigned.

In answer to a question from the Hearing Examiner, Ms. Falcigno indicated her belief that the majority of the Olney Coalition might support the rezoning if the two-over-two units were eliminated and the number of units was reduced. Tr. 220-221.

2. Roger Seganish, President, Briars Acres Community Association (Tr. 200-229):

Roger Seganish testified as President of the Briars Acres Community Association. Briars Acres is the community directly north and northeast of the subject site, across Bowie Mill Road. It is comprised of 119 single-family homes that are zoned R-200. His association is an active member of the Greater Olney Community Association, led by Mr. Zaborsky, and the Olney Coalition, led by Ms. Barbara Falcigno. His Association agrees with and supports Ms. Falcigno's testimony today as well as her position, of both of these community organizations, that the current zoning, the R-200 Zoning, is the better zone for the land, as R-200 is more compatible with the surrounding

communities than the proposed full yield PD-3 application. Therefore, he believes the PD-3 Zoning request, along with the Applicant's PD-3 plan, should be denied.

Compatibility is a key requirement for this land, as stated in the Olney Master Plan. Mr. Seganish recognized that a lot of work went into the Applicant's plan addressing compatibility, his Association feels that compatibility is still a fundamental issue. Compatibility is defined, in general, as being consistent with or being capable of existing or living together in harmony. Community harmony is one of the most important elements in this case and a fundamental compatibility requirement in the Olney Master Plan. Community harmony should be looked at from two perspectives, harmony with the surrounding communities to the property in question as well as harmony within the planned community.

According to Mr. Seganish, the exhibits, including all of the opposing letters, are examples of the disharmony from the surrounding communities with this plan. In addition, all the adjacent perimeter properties are zoned R-200. These properties were intended and designed to emphasize and embrace the semi-rural nature of Olney. The full yield of PD-3 Zoning (117 units in this case) does not embrace or preserve that semi-rural nature of our community, but deviates from that path and disrupts the balance of harmony in the community. The properties in the surrounding communities are less close together than those in the proposed plan, and the proposal would thus disrupt the semi-rural nature of the surrounding communities. The main effect of the full yield is that the resulting density of units on the ground will more than double as compared to the surrounding communities. [For reasons previously stated, Mr. Seganish's discussion of two-over-two units has not been summarized.] Mr. Seganish stated that, if the plan was proposing fewer units to mitigate the current high density (perhaps down to 100 units), he would consider the PD-3 Zone an option.

Mr. Seganish testified that another concern with respect to internal community harmony is

the proposed community layout itself. The planned development is actually divided in two physically separate communities by the protected water shed area. It cannot and should not be disturbed and he applauds the efforts to protect this area, including the buffer. However, because the water shed area separates these two communities from one another, these two communities will not be in harmony with one another. The majority of the housing units are clearly located in the southernmost portion of the property, and a much smaller amount of units are located in the parcel that's closest to Bowie Mill Road. The imbalance of the number and types of units shows the disharmony within the plan. The design means the communities will have limited or no vested interest in each other.

According to Mr. Seganish, another example of the compatibility issue with the current plan is the intended use of a private road to access the housing units closest to Bowie Mill Road. Maintaining a private road may create an affordability issue for these residents in this community. Mr. Seganish also questions whether it will be able to accommodate emergency service vehicles, especially a fire truck.

Mr. Seganish noted that the only bus service that is available is the Ride-On 53, which is slated to be cut to save money in the County's budget. Thus, there is no guarantee of public transportation for this community.

Lastly, the proposed housing density associated with the PD-3 Zoning will increase traffic along Bowie Mill Road, which is already congested, especially during rush hour. The County has made no apparent plans to deal with the current traffic problems on Bowie Mill let alone the additional traffic created by this new community. Mr. Seganish does not have more specific evidence to show that traffic would be greater but feels that it's not unreasonable to expect the traffic to be much greater than the 83 morning trips that are being projected by the Planning Board.



Mr. Seganish concluded that the Briars Acres community feels the re-zoning application should be denied based on the proposed PD-3 plan, which he believes is not compatible with the adjacent areas and neighborhoods or the semi-rural nature of his community and the surrounding communities.

In answer to a question from the Hearing Examiner, Mr. Seganish indicated that his community could possibly support the rezoning if the two-over-two units were eliminated and the number of units was reduced to 109, but they would have to see the plan. Tr. 219-220.

Mr. Seganish further testified that he had been caught in a 1.1 mile traffic jam on the hearing day on Bowie Mill Road, but he had never before seen a backup that far on Bowie Mill Road.

3. Robin Shea, President, Oatland Farm HOA (Tr. 230-241):

Robin Shea testified that she is President of the Oatland Farm Homeowners Association, representing 309 homes immediately to the northwest of the site with a mix somewhat similar to the proposed project. She indicated that regularly, when you turn right off of Brightwood Road, going southwest on Bowie Mill Road, the traffic is backed up and you have to wait for someone to let you in. After about 8:30, things lighten up so you don't have traffic until you get farther down past Muncaster Mill Road.

Ms. Shea also reported that her community has had several cases of County-owned rentals where there have been violations that haven't been corrected and her HOA had to go to court to get some resolution, and that's been a concern. Her community also has an area separated from the main community by green space. The HOA has experienced problems with those units, even though there's a mix of market rate townhomes, single-family homes and MPDUs, because they feel like they don't belong to the same community and don't pay their assessments.

4. Matt Zaborsky, President, Greater Olney Civic Association (GOCA) (Tr. 221-222; 316-324):

Matt Zaborsky testified that he is the President of the Greater Olney Civic Association

(GOCA). In answer to a question from the Hearing Examiner, Mr. Zaborsky indicated that he could not answer whether the numerous communities GOCA represents would support the rezoning if the two-over-two units were eliminated and the number of units was reduced, but they were unanimous in opposing the zoning change currently proposed. Tr. 221-222.

Mr. Zaborsky referred to the letter of opposition he submitted on behalf of the Greater Olney Civics Association. He had four points, one of which was compatibility. The Olney community does not feel that two over two units are compatible with the existing housing that exists in the community today.

The second issue is density. The Greater Olney Civic Association voted unanimously to oppose the re-zoning based on the density issue. GOCA thought 117 units was too much for this property. It doesn't meet the Master Plan tests.

Mr. Zaborsky also questioned the traffic expert's assumption that the ICC would mitigate traffic 10% because of the high tolls, and he expressed some worry about school capacity. He praised Applicant's design, but is not satisfied on how the two parts of the project would unite into one community.

5. Howard Greif (Tr. 48-69):

Howard Greif testified that he is a resident the Norbeck Grove community, which he said is about a half mile from the subject site. He testified about what he called the negative impacts of improper growth. He is concerned about the increased density of clustering of MPDU housing in a neighborhood and the "two over two" construction.

Mr. Greif has had many negative experiences in his neighborhood, which he attributed to the clustering of MPDU type units, especially "the issue of trash and uncleanness and . . . unsanitariness of the neighborhood." Tr. 49. Half of the units in his neighborhood are MPDUs. They are all two over two units. He brought a bag of this trash to the hearing, which was not

accepted into evidence. Instead, Mr. Greif introduced photographs of the referenced trash and turkey buzzards (Exhibit 85(a)-(f)) in his neighborhood.

Mr. Greif also complained of vandalism and bad behavior by teenagers in his neighborhood, which he attributed to the lack of management by the County of their rental tenants.

#### **D. People's Counsel**

People's Counsel, Martin Klauber, did not call any witnesses, but he participated in the hearing and supported the application conditioned upon elimination of the "two over two" units from the plan. Tr. 334-335.

I'm not against this development, I'm not in opposition to it, but I certainly could support it more . . . if there were not two by twos based on what I've heard from the community. So if there's an asterisk that can be applied to the front piece of your report, Mr. Examiner, I would, in this case, say limited support depending upon the applicant's decision about whether to include or not include the two over twos.

### **V. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **A. Standards for Council Review**

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for re-zoning, to consider whether the application, including the development plan, fulfills the "purposes and requirements" set forth in Code Section 59-C for the new zone. In making this determination, the law expressly requires the District Council to make five specific findings, "in addition to any other findings which may be necessary and appropriate to the evaluation of the proposed reclassification." Therefore, these findings are an essential part of the Hearing Examiner's Report and Recommendation.

The five specific findings required by §59-D-1.61 of the Zoning Ordinance are:

(a) *[That t]he proposed development plan substantially complies with the use and density indicated by the Master Plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or*

*other applicable county plans and policies . . .*<sup>10</sup>

*(b) That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

*(c) That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

*(d) That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*

*(e) That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

Because the general requirement of the law – that the application must fulfill the “purposes and requirements” of the new zone – is subsumed in the language of the five specific required findings (especially in subsection (b)), a determination that the five findings have been satisfied would satisfy the Montgomery County Zoning Ordinance. However, in addition to these five findings, Maryland law also requires that the proposed rezoning be in the public interest. As stated in the State Zoning Enabling Act applicable to the County, all zoning power must be exercised:

*“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [Regional District Act, M-NCPPC Article (Art. 28), Md. Code Ann., § 7-110].*

In sum, there are six findings required (§59-D-1.61(a) through (e) and the public interest). The “Required Findings” in the next part of this Report and Recommendation are organized in the order set forth in the statute to facilitate review.

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<sup>10</sup> The remaining language of this provision addresses additional height and density based on the inclusion of on-site MPDUs and workforce housing. That language is inapplicable in this case because it pertains to zones permitting a

## **B. Required Findings**

### *1. County Plans and Policies*

The first required finding is:

*[That t]he proposed development plan substantially complies with the use and density indicated by the Master Plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies. . . .*

#### **a. The Applicable Master Plan or Sector Plan**

The subject site is located in the area analyzed in the 2005 Olney Master Plan. The Master Plan, at pp. 37-38, specifically addresses the subject site and recommends the full yield allowed by the PD-3 Zone if specified objectives have been met. For the reasons discussed at length in Parts III. D. and E. of this report, the Hearing Examiner finds that Applicant's Development Plan meets the specified objectives and is in substantial compliance with the Master Plan's use and density recommendations, as "Finding (a)" requires.

#### **b. The General Plan and the County Capital Improvements Program**

The 2005 Olney Master Plan is, by its own terms, an amendment to the General Plan which carries out, with greater specificity, the General Plan's "Wedges and Corridors" approach to planning for the County. *See* Master Plan, p. i and p. 9. Since the proposed development complies with the recommendations of the Master Plan, it is consistent with the General Plan. There is no evidence that this proposal conflicts with the County's capital improvements program, or impacts it in any way. Technical Staff reports that "[t]he proposed development will not conflict with the County's Capital Improvements Program (CIP) or other applicable county plans and policies." Exhibit 65, pp. 22-23.



c. Other County Policies (Growth Policy and Adequate Public Facilities Ordinance)

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess whether the following public facilities will be adequate to support a proposed development: transportation, schools, water and sewage facilities, and police, fire and health services. The Planning Board's application of the APFO is limited by parameters that the County Council sets in its Growth Policy. While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is relevant to the District Council's determination in a rezoning case, as spelled out in Zoning Ordinance §59-H-2.4(f).

Section 59-H-2.4(f) requires Applicant to produce "[s]ufficient information to demonstrate a reasonable probability that available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application is submitted." In this case, the application was submitted on August 11, 2009, so the 2007-2009 Growth Policy adopted November 13, 2007 (Resolution 16-376) will apply to the rezoning determination.

The 2007-2009 Growth Policy provides, at pp. 22-23, "[t]he Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated." There is no such evidence in this case. The remaining three public facilities – transportation, schools and water and sewer service – were discussed at length in Part III.D.4 of this report.

Based on that discussion, the Hearing Examiner finds that Applicant has demonstrated a reasonable probability that available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted. In sum, the requested rezoning does not conflict with "other applicable County plans and policies."

## 2. *Zone Requirements, Safety, Convenience and Amenity of Residents and Compatibility with Adjacent Development*

The second required finding is:

*That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

### a. Compliance with Zone Purposes, Standards and Regulations

The requirements for the PD-3 Zone are found in Code §59-C-7.1. The PD-3 Zone is a “floating zone,” which is a flexible device that allows a legislative body to establish a district for a particular type of use, with land use regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone, *i.e.*, it satisfies the purpose and regulations of the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific criteria, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings. These specifications must be spelled out on a development plan, however, to assure appropriate zoning oversight by the District Council. Once it is approved, the development plan provides the design specifications for the site, much as the Zoning Ordinance provides design specifications for more rigidly applied zones.

#### i. Purposes of the PD-3 Zone

The purpose clause for the PD-3 Zone (as well as the other PD Zones) is found in Code §59-C-7.11. It is set forth in full below, with relevant analysis and conclusions following.

*It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional District and the area Master Plans by permitting unified development consistent with densities proposed by Master Plans. It is intended that this zone provide a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories. In so doing, it is intended that the zoning category be utilized to implement the general plan, area Master Plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.*

*It is further the purpose of this zone that development be so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development. It is intended that development in this zone produce a balance and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown on the area Master Plan, and related public and private facilities.*

*It is furthermore the purpose of this zone to provide and encourage a broad range of housing types, comprising owner and rental occupancy units, and one-family, multiple-family and other structural types.*

*Additionally, it is the purpose of this zone to preserve and take the greatest possible aesthetic advantage of trees and, in order to do so, minimize the amount of grading necessary for construction of a development.*

*It is further the purpose of this zone to encourage and provide for open space not only for use as setbacks and yards surrounding structures and related walkways, but also conveniently located with respect to points of residential and commercial concentration so as to function for the general benefit of the community and public at large as places for relaxation, recreation and social activity; and, furthermore, open space should be so situated as part of the plan and design of each development as to achieve the physical and aesthetic integration of the uses and activities within each development.*

*It is also the purpose of this zone to encourage and provide for the development of comprehensive, pedestrian circulation networks, separated from vehicular roadways, which constitute a system of linkages among residential areas, open spaces, recreational areas, commercial and employment areas and public facilities, and thereby minimize reliance upon the automobile as a means of transportation.*

*Since many of the purposes of the zone can best be realized with developments of a large scale in terms of area of land and numbers of dwelling units which offer opportunities for a wider range of related residential and nonresidential*

*uses, it is therefore the purpose of this zone to encourage development on such a scale.*

*It is further the purpose of this zone to achieve a maximum of safety, convenience and amenity for both the residents of each development and the residents of neighboring areas, and, furthermore, to assure compatibility and coordination of each development with existing and proposed surrounding land uses.*

*This zone is in the nature of a special exception, and shall be approved or disapproved upon findings that the application is or is not proper for the comprehensive and systematic development of the county, is or is not capable of accomplishing the purposes of this zone and is or is not in substantial compliance with the duly approved and adopted general plan and Master Plans. In order to enable the council to evaluate the accomplishment of the purposes set forth herein, a special set of plans is required for each planned development, and the district council and the planning board are empowered to approve such plans if they find them to be capable of accomplishing the above purposes and in compliance with the requirements of this zone.*

As discussed in Parts III.D.3 and V.B.1.b, above, the proposed development will be in substantial compliance with the 2005 Olney Master Plan. Accordingly, the requested reclassification will comply with the first element of the purpose clause by allowing implementation of applicable Master Plan objectives.

The second paragraph of the purpose clause calls for a design which will facilitate social and community interaction, create a distinctive visual character, and offer a balanced mix of uses. As observed by Technical Staff (Exhibit 65, p. 14), “The design and layout of the proposed development also provides maximum social and community interaction through pedestrian and vehicular linkages and, as such, it would provide for the safety, convenience and amenity of residents and assure compatibility with the surrounding residential land uses.”

The proposed development will provide several greens, play areas, tot lots, seating areas and open spaces (as shown in Exhibit 112, reproduced on page 21 of this report) to allow gathering space for the community and encourage social and community interaction. These features will contribute to the desired “distinctive visual character” of the development. Added to this will be a network of

pedestrian paths which will connect the open areas to the proposed residences and to adjacent developments, thereby maximizing social and community interaction. *See* Exhibits 113 and 94, reproduced on pages 21-22 of this report. There will be no commercial uses on site because the Master Plan does not envision any, but there will be a mix of residential and recreational uses.

The third paragraph of the purpose clause encourages “a broad range of housing types.” The proposed development will provide for a range of different sized single-family detached homes, single-family attached units and townhouse units on differing sized lots. Thirty percent of these units will be MPDUs ; thirty percent will be workforce housing; and forty percent will be market-rate units. It will thus provide a broad range of housing choices.

The fourth and fifth paragraphs address trees, grading and open space. The areas to be developed as part of this proposal are primarily on existing open fields, thereby preserving much of the existing forest on the property. As already mentioned, the proposal will provide a great deal of open space, including several greens and play areas to allow an area for community recreation.

The sixth paragraph calls for pedestrian circulation networks to minimize reliance upon automobiles. The development plan here provides for a network of pedestrian paths which will clearly reduce reliance upon automobiles.

The large scale advocated in the seventh paragraph of the purpose clause is provided by a development of over thirty-two acres in size.

The eighth paragraph of the purpose clause calls for a development which provides for safety, convenience, amenity, and compatibility, and the ninth paragraph reiterates the need for a development that will be proper for the comprehensive and systematic development of the County, and consistent with the Master Plan and the Zone. Safety was discussed in connection with transportation facilities in Part III.D.4.a. of this report, and as noted there, the proposed access ways



and internal circulation systems will be adequate and safe. Convenience and amenities include the pedestrian networks and park areas which were discussed above in this section.

Compatibility was discussed at length in Part III.E. of this report, and despite concerns expressed by the community, the Hearing Examiner found that the weight of the evidence established that the proposed development will be compatible with surrounding uses, subject to the later detailed review at Site Plan and Subdivision. This is not to say that the Council need not address compatibility at this stage. Certainly, it must; however, it should not dictate a land use plan in such detail that sensible later planning is foreclosed when all the engineering and planning issues are reviewed at Site Plan. That is precisely what Site Plan review is designed to do.

The PD Zone requires that a certain percentage of the units be townhouse or attached, and it is therefore obvious that the Planning Board and Council, in approving the Master Plan's call for a PD Zone, considered this type of development to be generally compatible with its surroundings. The Master Plan also addressed this site specifically, and the Council therefore clearly considered its recommended development for this site to be compatible with surrounding development, if the criteria specified in the Master Plan were met. Based on the entire record of this case, especially the evaluation of the Technical Staff and the Planning Board, those criteria were met.

Technical Staff concluded that the development plan would satisfy the zone's purpose clause, including compatibility with the surrounding area. As stated by Technical Staff (Exhibit 65, p. 14),

Reclassification of the subject property from the R-200 zone to the PD-3 Zone satisfies the design, housing, amenity, circulation, and other purposes of the PD zone. Staff finds that development of the site under the PD-3 Zone is proper for the comprehensive and systematic development of the County, will accomplish the purposes of the zone, and will be in substantial compliance with the General Plan and the 2005 Olney Master Plan that specifically recommended the site for the type of development that is proposed in this application.

The Planning Board adopted Technical Staff's findings (Exhibit 71). Despite the concerns voiced by the opposition, there was no contrary expert evidence presented. Considering the evidence in this

case, the Hearing Examiner finds that the subject development will provide the kind of housing mix and general-benefit open space recommended by the Purpose Clause, as well as pedestrian interconnectivity and compatibility with its surroundings.

In sum, the proposed development is consistent with the intent and purposes of the PD-3 Zone. We next look to the “standards and regulations” of the PD-3 Zone.

*ii. Standards and Regulations of the PD-3 Zone*

The standards and regulations of the PD-3 Zone are spelled out in Code Sections 59-C-7.12 through 7.18.

Section 59-C-7.121, Master Plan

Pursuant to Code §59-C-7.121, “no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted Master Plan which shows such land for a density of 2 dwelling units per acre or higher.” The applicable Master Plan, the 2005 Olney Master Plan, recommends that the subject property be developed under the PD-3 Zone, which permits 3 dwelling units per acre, plus additional density for the inclusion of MPDUs. Accordingly, this provision is satisfied in this case.

Section 59-C-7.122, Minimum Area

Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. Alternative criterion (a) requires that the site “contain sufficient gross area to construct 50 or more dwelling units under the density category to be granted.” The subject property contains 32.74 acres, more than large enough to construct 50 dwelling units. It is in fact proposed for the construction of 114 dwelling units.

Section 59-C-7.13 and 7.131, Residential Uses Permitted

Pursuant to Code §59-C-7.131, single-family attached (including townhouses) and detached

units are permitted in the PD-3 Zone, but it also specifies that in a development of fewer than 200 units, multi-family dwellings are not permitted. Moreover, a minimum of 35% of the units must be detached and a minimum of 35% must be attached or townhouse. Here, the proposed Development Plan provides for 50% single-family detached units (57 units) and 50% single-family townhouse and/or attached units (57 units), satisfying this requirement.

#### Section 59-C-7.132, Commercial Uses

There are no commercial uses proposed here.

#### Section 59-C-7.133, Other Uses Permitted

Under subsection (a) of this provision of the PD Zone, recreational facilities intended for the exclusive use of the residents and their guests are permitted. The remaining subsections do not appear to be applicable to this case.

#### Section 59-C-7.14, Density of Residential Development

Three subsections (a), (b) and (c) apply to this case. Subsection (a) sets forth the available density categories for residential development in a PD Zone. In this case, the density category specified in the development plan is PD-3, which is the category recommended in the 2005 Olney Master Plan.

Subsection (b) provides, in relevant part:

*(b) The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide moderately priced dwelling units in accordance with Chapter 25A of this Code, as amended, and such other information as may be relevant. . . .*

Subsection (c) provides, in relevant part:

*(c) The density of development is based on the area shown for residential use on the master plan and must not exceed the density permitted by the density category granted. However, the maximum density allowed under subsection (a) may be*

*increased to accommodate the construction of Moderately Priced Dwelling units and workforce housing units as follows:*

*(1) For projects with a residential density of less than 28 dwelling units per acre, the number of Moderately Priced Dwelling Units must not be less than either the number of density bonus units or 12.5 percent of the total number of dwelling units, whichever is greater.*

\* \* \*

The density category applied for, PD-3, is the second lowest density available in the PD Zones, and is specifically recommended in the 2005 Olney Master Plan. The base density allowed for a site of this size in the PD-3 Zone is three Dwelling Units per acre. Multiplying that by 32.74 acres yields a maximum base density of 98.22 Dwelling Units. However, consistent with the Subsections C-7.14 (b) and (c), the Applicant is entitled to a Bonus Density of 22% because it will provide more than 15% MPDUs. Montgomery County Code §25A-5(c). Multiplying 98 dwelling units by 22% yields a bonus density of 21 dwelling units. Adding that density to the base density of 98 results in a permissible maximum density of 119 dwelling units. As noted, Applicant proposed 114 dwelling units (*i.e.*, well under the maximum density permitted).

#### Section 59-C-7.15, Compatibility

*(a) All uses must achieve the purposes set forth in section 59-C-7.11 and be compatible with the other uses proposed for the planned development and with other uses existing or proposed adjacent to or in the vicinity of the area covered by the proposed planned development.*

*(b) In order to assist in accomplishing compatibility for sites that are not within, or in close proximity to a central business district or transit station development area, the following requirements apply where a planned development zone adjoins land for which the area master plan recommends a one-family detached zone:*

*(1) No building other than a one-family detached residence can be constructed within 100 feet of such adjoining land; and*

*(2) No building can be constructed to a height greater than its distance from such adjoining land.*

\* \* \*

*(e) Compliance with these requirements does not, by itself, create a presumption of compatibility.*

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<sup>11</sup> Subsections (c) and (d) pertain to waivers, which are not requested in this case.

As previously discussed, Technical Staff, the Planning Board and the Hearing Examiner found that the proposed development will be compatible with surrounding development. Moreover, as noted by Technical Staff (Exhibit 65, p. 17),

The plan also provides a winding and scenic pedestrian connection between the two sections of the project. The larger portion of the development . . . is designed in such a manner that only the single family houses will be on the periphery of the development adjoining the existing residential dwellings. The townhouses and . . . [other units] in this portion of the development are located in the interior of the development surrounded by the single-family dwellings and the forest conservation area. The proposed single-family detached houses adjoining the existing residential properties are designed in a manner that is compatible with the properties that they are abutting and confronting in terms of lots sizes and density.

There will be no buildings other than single-family detached homes within 100 feet of the adjoining single-family detached developments,<sup>12</sup> and no buildings are proposed to a height greater than its distance from such adjoining land. Thus, the Hearing Examiner finds that all the setbacks proposed for this development are compatible with adjacent development.

#### Section 59-C-7.16, Green Area

This section of the Ordinance requires 30% green space for the PD-3 Zone, and the Development Plan more than satisfies that requirement with a proposal for 44.9% green space. Technical Staff found that the proposed development plan satisfies the green space requirement, but that the green area may be reduced to some extent at Preliminary Plan and Site Plan reviews. Exhibit 65 pp. 17-18.

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<sup>12</sup> A small section of the proposed development, which includes townhouses and other attached units, is located on the northwestern corner of the property. Although some of those units are closer to the property line than 100 feet, Technical Staff notes that they are separated from the closest residential developments by a 250-foot wide Pepco utility easement and by Bowie Mill Road, with its ultimate right-of-way width of 80 feet. Exhibit 65, p. 17. Thus, they will not be within 100 feet of any adjoining land on which one-family detached homes can be built. Arguably, this plan does not comport with the wording of subsection 59-C-7.15(b)(1), because the proposed attached units would be within 100 feet of “*land for which the area master plan recommends a one-family detached zone.*” (i.e., the R-200 Zone). However, the proposal is clearly consistent with the intent of this provision, which is to ensure compatibility with adjacent single-family detached homes, because no such homes can be built within the Pepco easement or the Bowie Mill Road right-of-way. It must be remembered that the precise locations of the buildings on the Development Plan are illustrative, and they may be changed at site plan review if it is determined that compliance with this statutory provision requires an increase in the setbacks in the northwest portion of the development.

Section 59-C-7.17, Dedication of Land for Public Use

This section requires that land necessary for public streets, parks, schools and other public uses must be dedicated in accordance with regulations and the Master Plan, with such dedications shown on all required development plans and site plans. The development plan in this case depicts 1.1852 acres of land dedicated to the Bowie Mill Road right-of way.<sup>13</sup> Applicant also notes in its Pre-Hearing Statement (Exhibit 61(a), p. 17) that, “In addition, main circulation streets labeled on the Plan as Streets “A”. “B” and “C” will also be dedicated to public use.” Thus, a determination of the precise amount of land to be dedicated will have to await site plan and preliminary plan review.

Section 59-C-7.18, Parking Facilities

This section requires that off-street parking be provided in accordance with Zoning Ordinance Article 59-E. Under §59-E-3.7, two parking spaces are required for each single-family dwelling unit. There will be a maximum of 114 single-family dwelling units, and therefore at least 228 parking spaces off of the public streets must be provided. As shown on the Development Plan, Applicant’s plan is to provide a total of 243 such spaces, with 138 of those to be provided on individual lots and 105 to be provided on private streets. Technical Staff noted that Applicant “will have to demonstrate at site plan that [the dimensions of] the proposed parking spaces satisfy parking code standards.” Exhibit 65, p. 18.

In sum, the Hearing Examiner concludes that the proposed rezoning and the Development Plan will be consistent with the purpose clause and all applicable standards for the PD-3 Zone.

b. Safety, Convenience and Amenity of Residents

The next part of “Finding (b)” required by Section 59-D-1.61 is a determination that the proposed development would provide the “maximum safety, convenience, and amenity of the

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<sup>13</sup> Typos in the Technical Staff report result in the dedication being listed as 1.85 acres instead of the correct figure of 1.185 acres. Exhibit 65, pp. 4 and 18.



residents.” Since this required finding is practically identical with one of the purpose clause requirements for the PD-3 Zone, it has been discussed in that context in this report. The Hearing Examiner finds that Applicant has provided the maximum in safety, convenience and amenities for the future residents of this development.

c. Compatibility with Adjacent Development

The final required determination under “Finding (b)” is that the proposed development be compatible with adjacent development. For the reasons discussed above in connection with the Purpose Clause of the PD-3 Zone, and at length in Part III. E. of this report, the Hearing Examiner concludes that the proposed residential dwelling units will be compatible with other uses existing or proposed in the vicinity of the planned development.

3. Internal Vehicular and Pedestrian Circulation Systems and Site Access

The third required finding is:

*That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

As discussed in Part III.D.4(a) of this report, Applicant’s traffic engineer, Edward Papazian, opined that the proposed internal vehicular circulation systems will be safe and efficient. Applicant’s civil engineer, Ed Wallington, testified that there is easily adequate distance for cars to pull safely in and out of the development. Tr. 284-286. Technical Staff stated (Exhibit 65, 23),

The proposed two points of access located on Bowie Mill Road and the proposed internal vehicular and pedestrian circulation networks, as shown on the Development Plan, are generally safe and adequate.

Staff also noted that additional measures related to pedestrian and vehicular traffic will be considered at site plan review, including appropriate road widths to accommodate fire trucks.

Accordingly, the Hearing Examiner finds that the proposed circulation systems and site access would be safe, adequate and efficient.

#### 4. Preventing Erosion, Preserving Vegetation, Forest Conservation and Water Resources

The fourth required finding is:

*That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*

As discussed in Part III.D.5. of this report, the subject site is not within a Special Protection Area or Primary Management Area.

According to Mr. Wallington, the existing grading conditions at the site are actually quite favorable for grading the new street and lot pattern proposed here. The objectives of the environmental site design include avoiding large cuts or fills, following the existing grading conditions as much as possible and minimizing grading overall. The existing slopes have a grade of 2 to 10 percent, so streets will be gently graded and generally follow existing topographic conditions, with very few cuts or fills. In Mr. Wallington's professional opinion, from an engineering perspective, this development plan will result in a safe, adequate and efficient form of development for this property and the proposed community. Tr. 287-288.

Environmental issues were discussed in Part III.D.5. of this report. Applicant has been sensitive to environmental concerns, and the entire record indicates that Applicant's plans take due care to protect the environment. The PFCP has been approved by the Planning Board, and DPS has approved the stormwater management concept plan. Both plans will be reviewed in connection with site plan and subdivision.

In sum, the Hearing Examiner finds that Applicant has demonstrated the environmental controls called for by the fourth required finding.

### 5. Ownership and Perpetual Maintenance

The fifth required finding is:

*That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

Montgomery County is the owner of the site, and the Applicant is the contract purchaser.

Exhibit 84. Applicant submitted an illustrative homeowners association “Declaration of Covenants, Conditions and Restrictions” that describes the proposed ownership and maintenance of common areas by a homeowners association, after development. Exhibit 13, Article XIII..

The Hearing Examiner finds that Applicant has sufficiently demonstrated both its interest in the property and its commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

### 6. The Public Interest

The final finding which is required under Maryland law is that the proposed rezoning will be in the public interest. When evaluating the public interest, the District Council normally considers Master Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities or the environment and public benefits such as provision of affordable housing.

The issue of Master Plan conformance was considered in Part III.D.3. of this report. As outlined therein, Applicant’s proposal is consistent with the recommendations, goals and objectives of the 2005 Olney Master Plan. The Planning Board and its Technical Staff both support the proposed rezoning. The impact on public facilities was discussed in Part. III.D.4. of this report. The evidence indicates that transportation, schools and water and sewer services would not be adversely affected by the proposed development.

Joseph Giloley of the Montgomery County Department of Housing and Community Affairs

(DHCA) testified on behalf of the property owner, Montgomery County. Mr. Giloley stated that approval of this local map amendment will enable the property to be developed with many more MPDUs and workforce housing units than under the current R-200 Zoning. Therefore, development of this property implements pertinent County policies to provide affordable housing on this site.

According to Mr. Giloley, the subject zoning application is consistent with the County's development agreement, as outlined in the Technical Staff report. It is also consistent with all the requirements of the PD-3 Zone. The County therefore strongly recommends approval of the Zoning application. Tr. 19-36. This testimony was also buttressed by a letter, dated March 22, 2010, from DHCA stating that DHCA “strongly supports” approval of the rezoning. That letter is attached to the Technical Staff report (Exhibit 65).

Although the surrounding communities have some legitimate concerns, they have been largely addressed by the Applicant’s agreement to additional binding elements and by the relief of traffic congestion which will be provided by the ICC. The proposed project will offer a mix of housing opportunities, including affordable housing, in a manner which is sensitive to the environment and compatible with the surrounding area.

For the reasons discussed at length in this report, the Hearing Examiner concludes that the proposed development would be in the public interest.

### **C. Conclusion**

Based on the foregoing analysis, and after a thorough review of the entire record, I reach the following conclusions:

1. The proposed development satisfies the intent, purpose and standards of the PD-3 Zone, and meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance;
2. The application proposes a development that would be compatible with development in the surrounding area; and

3. The requested reclassification to the PD-3 Zone has been shown to be in the public interest.

## **VI. RECOMMENDATION**

I therefore recommend that Zoning Application No. G-885, requesting reclassification from the R-200 Zone to the PD-3 Zone, of a 32.74-acre parcel of unimproved land, known as Parcel P850, located at 18241 Bowie Mill Road, about half a mile west of Laytonsville Road, in Olney, Maryland, be approved in the amount requested and subject to the specifications and requirements of the revised Development Plan, Exhibits 132(a) and(b), provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, as required under Code §59-D-1.64.<sup>14</sup>

Dated: July 28, 2010

Respectfully submitted,

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Martin L. Grossman  
Hearing Examiner

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<sup>14</sup> A five vote majority is required because six votes are mandated by Zoning Ordinance §59-D-1.62 only when a PD Zone is sought with a density category greater than that recommended in the Master Plan. That is not the case here.